United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

76-6049-50-59

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

CITY OF HARTFORD, on behalf of itself and its inhabitants, Richard Brown, Nicholas R. Carbone, John Cunnane, William A. DiBella, Allyn A. Martin, Richard Suisman, Margaret V. Tedone and Olga W. Thompson in their official capacity, Miriam Jordan and Fannie Mauldin,

Plaintiffs-Appellees,

vs.

The TOWNS OF GLASTONBURY, WEST HARTFORD and EAST HARTFORD,

Defendants-Appellants,

and

CARLA A. HILLS, in her capacity as Secretary of the Department of Housing and Urban Development; HAROLD G. THOMPSON, in his capacity as Acting Regional Administrator of the Department of Housing & Urban Development; LAWRENCE THOMPSON, in his capacity as District Director of the Department of Housing and Urban Development; and THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT and the Towns of FARMINGTON, WINDSOR LOCKS, VERNON, and ENFIELD,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
JUN 17 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

PLAINTIFFS | M. JOSEPH BLUMENFELD | DEFENDANTS

HARTFORD, CITY OF, on behalf of itself and its inhabitants, Richard Brown, Nicholas R. Carbone, John Cunhane, William A. DiBella, Allyn A. Martin, Richard Suisman, Margaret V. Tedone, and Olga W. Thompson in their official capacity , Miriam Jordan and Fannie Mauldin

HILLS, Carla A. in her capacity as Secretary of the Dept. of Housing and Urban Development: HAROLD G. THOMPSON, in his capacity as Actin Regional Administrator of the Dep of Housing & Urban Developemant; LAWRENCE THOMPSON, in his capacity District Director of the Dept. of Housing and Urban Development, and THE DEPT. OF HOUSING AND URBAN DEVELOPMENT and West Hartford, Glastonbury, Farming Windsor Locks, Vernon, Enfield and East Hartford,.

CAUSE

42 USC §1981,1982 & 1985; 42 USC 2000(d) seeks to enjoin defs. from disbursing or transferring any funds pursuant to Community Development Actof 1974. , on the grounds that the applications fail to comply with requirement of the Act.

ag

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Docket Entries

DATE 1975	NR.	PROCEEDINGS
8-11	1.	Complaint filed. Pltf. motion to proceed in forma pauperis, GRANTED, Blumenfeld, J. m 8-12-75. Motion for Preliminary Injunction filed with memorandum in support of motion . ORDER TO SHOW CAUSE, Blumenfeld, J. m 8-12-75. (Hearing 8/26/75 at 10 a.m.) Summons issued and together with same and copies of all related papers handed to Marshal for serivce .
8-15	2.	Marshal's returns showing service upon U.S. Atty. and by certified mail to Atty General, Wash. D.C. and Carla Hills, Sec. of HUD & H.Thompson, Regional Dir.
8-20	3	Motion for Continuance of the Hearing S heduled for Plaintiffs Motion for a Preliminary Injunction.
8-21	4	Defendants Motion to Join Additional Defendants.
"	5	Memorandum in Support of Defendants Motion to Join Addition Defendants.
8-25	6.	Opposition to Plaintiffs Motion for Preliminary Injunction filed with affidav
"	7	Memorandum in Support of Opposition to Motion for Preliminary Injuction.
8-26		HEARING on Pltfs motion for a preliminary injunction. Atty Epstein states they have filed motion to Join suburban communities as a party. Motion granted. Motion for Summary Judgment to be filed by Sept. 9, by Defendant with brief. Plaintiff to respond in one week. Hearing to be set down thereafter. Atty Bellman to file brief as to necessity of testimony and what nature of testimony will be to be filed by Sept. 15 and hearing will be on 16th. Each town will submit its claim with respect to bond to be furnished by plaintiff for Temporary Injunction. Bond to cover 90 days. Information from towns should be submitted by Thrusday. Atty Wilhelm of U.S. Attys office to be liasion counsel.
"	8	Supplemental Memorandum in support of Pltf. motion for preliminary injunction file in Court. Court adjourned at 11:05.
8-28	9.	Appearance of Anthony C. Ward entered for def. Town of Windsor Locks.
9-2	10	Appearance of Walter A. Twachtman entered for the Tn of Glastonbury.
9/9	11	Certification of mailing by A. Ward
	12	Stipulation of Joinder by Town of Enfield
	13	Appearance of Abbot B. Schwebel
	14	Stipulation of Joinder by Town of Vernon
	15	Stipulation of Joinder by Town of E. Htfd.
9/5	16	Appearance of John Adams entered for the Town of Enfield.
9/8	17	Stipulation of Joinder by Town of Farmington.
9/9	18m	Appearance of Philip R Dunn entered for the Town of W. Htfd.
"	19	Stipulation of Joinder by Town of West Htfd
" 9-10	20	Appearance of Lloyd Frauenglass entered for the Tn of Glastonbury
"	21	Errata to Defendants Memorandum in Support of Opposition to Plaintiffs Motio for Preliminary Injuction.
9-12	22	Statements of Marerial Facts as to Which There is No Genuine Dispute
"	23	Federal Defandants Motion to Dismiss or, in the Alternative for Summary Judgm
"	24	Memorandum in support of opposition to motion for preliminary injunction.
"	25	Supplemental Affidavit of Lawrence L.Thompson
"	26	Affidavit of William J.Flood.
9-15	27	Appearances of Bradley Bates & Palmer McGee entered for the def. Tn of Farmin
"	28	Stipulation of Joinder Tn of Glastonbury
9-12	29	Exhibits A thru P , Town of Enfield
"	30	Exhibits A thru P , Tn of East Hartford
"	31	Exhibits A thru L, Tn of Vernon.
"	32	Exhibits A thru O , Tn of West Hartford,
"	33	Exhibits A thru M, Tn of Glastonbury.
"	34	Exhibits A thru K, Tn of Windsor Locks.
"	35	Exhibits A thru M, Tn of Farmington.
"	36	Exhibits A thru J, City of Hartford
8-27	37.	Marshal's return showing service on Mary Hennessey & Corp. Counsel (550 "

Docket Entries

DATE	NR.	PROCEEDINGS
9-19	38	Plaintiffs Statement of Material Facts as to Which There Are Genuine Disputes.
"	39.	Plaintiffs Memorandum in Opposition to Motion to Dismiss or in the Alternative for Summary Judgment.
"	40	Affidavit of Richard Suisman, Joseph Alleyne, and William Slitt.
9-22	40a	HEARING on def.s motion for summary judgment combined with Hearing on the Merits. Third Affidavit of Lawrence Thompson filed. One witness sworn and testified for Pltf.
9-23		CONT. HEARING On defs. motion for summary judgment combined with hearing on the Merits. One Pltf. witness previously sworn continues to testify. Two (2) Pltfs. witnesses sworn and testified. Pltf's Exh. 1,2,3,4,5,6,7,&8 filed.
9-24		CONT. HEARING. Witness, A. Green previously sworn continues to testify. PLTF Exhibits 9, 10, 11, 12, 13 & 14. filed. One def. witness sworn and testified. Parties will rely upon papers already submitted. Pltf. moves for preliminary injunction. Decision reserved.
9/30	41	**Memorandum of Decision on Plaintiffs' Motion for a Preliminary Injunction, Filed. (Blumenfeld, J.)m-10/1/75. Copies sent to all counsel of record on 10/1/75.**
9-24	42.	Marshal's returns showing service.
10-9	43	Motion to Amend Preliminary Injuctionm filed by def. Tn of Enfield & Windsor Locks
"	44.	Affidavit of Philip Forzley,
"	45.	Affidavit of Michael J.Kopeski.
"	46.	Motion Submitted by Town of Farmington For Permission to File Supplemental Memorandum.
"	47	Motion to Reconsider (Alter or Amend) Judgment filed by 7 Defs.
"	48.	Memorandum of Defendants, East Hartford, Enfield, Farmington, Glastonbury, Vernon, West Hartford, & Windsor Locks, in support of their motion to Reconsider.
10-10	49	Federal Defs. Statement in Support of the Motion to Reconsider the Courts Order of Sept. 30, 1975 filed on behalf of the Def. communities.
"	50	Fourth Affidavit of Mr. Lawrence L. Thompson.
10-17	51.	Appearance of Thomas J.Groark Jr. & Francis H. Morrison 3rd entered for the Town of Farmington.
10-16		Substitute Front Page filed by def. for memorandum #23 filed on 9/12/75.
10-17		HEARING on Def. motion to reconsider RE: preliminary injunction. Pltf's brief in response to def. motion to reconsider. Windsor Locks Exh 1-17 filed. One witness sworn and testified for the def. Town of Enfield. Court modifies Order Re: Towns of Enfield and Windsor Locks to permit expenditure of Funds in the amoun and for the purposes as states in Court.
"	52	Plaintiffs Memorandum in response to Def. Motion to Reconsider
10-29	53	Ruling on Defendants' Motion to Reconsider and to Amend Preliminary Injunction, Blumenfeld, J. m 10 30 75. Copies mailed to all counsel.
11-7	54.	Supplemental Affidavit of Wm J. Flood
"	55.	Affidavit of Allan F. Thornton.
11/12		Court Reporter's Notes of Proceedings held on August 26, September 22, 23 and 24, 1975, filed in Hartford. (Collard, R.)
11/20		Court Reporter's Notes of Proceedings held on October 17, 1975, filed in Hartford. (Collard, R.)
12-18	56.	Appearance of Martin Burke entered for the TN of Vernon.
"	57.	Appearance of John J. angenbach entered for the Tn of W. Htfd

Docket Entries

DATE	NR.	PROCEEDINGS
1975		
12-29	58.	Motion for Permission to Withdraw filed by Abbot Schwebel "So Ordered, Blumenfeld J m 12-31-75. Copies mailed.
1976		
1-15	59	Plaintiffs Memorandum in opposition to defendant HUD'S motion to dismiss or in the alternative for summary Judgment
1-12	60	Supplemental Motion to Dismiss or in the alternative for summary judgment filed by deft.
1-16	61	Amended ot Supplemental motion to dismiss or in the alternative for summary judgment filed by deft.
1-28	62	Memorandum of Decision filed. Blumenfeld, J m 1-29-76. (injunction was made permanent) Copies mailed to all counsel.
2-5	63	Appearance of Wm Rogers & Ralph Elliot entered for Tn of Glastonbury.
2-10	64	JUDGMENT entered. Blumenfeld, J. m 2-10-76. Copies mailed to all counsel
2-20	65.	Motion to Amend Judgment Or in the Alternative for Relief Therefrom filed the Town of Glastonbury.
"	66.	Motion to Alter or Amend Judgment or in the Alternative, For Relief from Operation of Judgment filed by Town of Vernon.
"	67.	Memorandum in support of motion to alter or amend judgment or in the alter for relief from operation of judgment filed by the Tn of Vernon.
2-25	68	Motion for Admission of Visiting Atty Richard Bellman to appear for Pltfs
2-27		#68 Motion for visiting atty. "motion granted." Blumenfeld, J. Copies to couns
3-1	69	Motion for Enlargement of Time to File Mem. of Law and supporting materi
3-2		Motion #69 Granted. Blumenfeld, J. m 3-2-76. Copies to counsel.
3-8	70	Notice of Appeal filed by deft. Town of West Hartford, Certified copies of appeal and docket entries mailed to U S. Court of Appeals and New Haven. Civil Management Plan and Forms C & D handed to Atty Langenbach.
"	71.	Bond for Costs on Appeal ($250.00)
3-9	72	Notice of Appeal filed by Deft. Town of East Hartford, , Certified copies mailed to U.S. Court of Appeal and New Haven with copies of docket entries. Civil Management Plan and Forms C & D handedto Atty McNamara. ($250.00 check mailed to New Haven for deposit into Registry.
"	73	Plaintiffs Opposition to Motions By Glastonbury and Vernon to Amend Judg
3-18	74	Motion to Hold in Abeyance by def. Town of Glastonbury.
3-30	75	Notice of Appeal filed by Deft. Town of Glastonbury, .Attested copies mailed to U.S. Court of Appeal and New Haven with copies of docket. Copies of notice mailed to counsel of record. Civil management plan and Forms C &D handed to Atty Elliot.
"	76	Bond for Costs on Appeal filed.($250.00)
4-7	77	Transcript of Hearing held on 9/22/75. Collard, R.
"	78	Transcript of Hearing held on 9/ 23/76. Collard, R.
"	79	Transcript of Hearing held on 9/24/76. Collard, R.
4-9	80	Motion for Extension of time for Transmission of Record. filed by Deft. Town Glastonbury.
4-12		Motion #80 Granted. "Time for transmittal of record on appeal extended to 5/ Blumenfeld J. m 4-12-76. Copies to counsel.
"		HEARING on Tn of Vernon motion to alter judgment. Supplemental brief submitt by Tn of Vernon. Dec. Reserved. Tn of Glastonbury's motion off indefinitely.

Docket Entries

DATE 1976	NR.	PROCEEDINGS
4-14	82	Motion for Extension of time for transmission of record filed by Tn of Hartford, "The time is enlarged to May 7, 1976. Blumenfeld, J. " m 4-14-7 Copies to counsel and US Court of Appeals.
4-19	83	Notice of Change of Address of Atty Mary Hennessey.
4-21	84	Ruling on Defendants Motions, (Blumenfeld J, m 4-21-76. Copies to counse (Tn of Vernon motion to alter judgment, granted)

A True Copy
ATTEST:
[illegible] A. MACKOWSKI
Clerk, U. S. District Court
By: [illegible]
Deputy Clerk

A 6

COMPLAINT

FILED
AUG 11 1 20 PM '75
CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

THE CITY OF HARTFORD, CONNECTICUT, on behalf of itself and its inhabitants, RICHARD BROWN, NICHOLAS R. CARBONE, JOHN CUNNANE, WILLIAM A. DIBELLA, ALLYN A. MARTIN, RICHARD SUISMAN, MARGARET V. TEDONE and OLGA W. THOMPSON, in their official capacity, MIRIAM JORDAN and FANNIE MAULDIN Plaintiffs against CARLA A. HILLS, in her capacity as Secretary of the Department of Housing and Urban Development; HAROLD G. THOMPSON, in his capacity as acting Regional Administrator of the Department of Housing and Urban Development; LAWRENCE THOMPSON, in his capacity as District Director of the Department of Housing and Urban Development, and THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT Defendants	H 75/258 CIVIL NO. CLASS ACTION COMPLAINT

NATURE OF ACTION

1. This action is brought by the City of Hartford, Connecticut; several City officials and low-income and minority

residents of Hartford who reside in inadequate, deteriorating or prohibitively expensive housing. This is a class action brought on behalf of all low-income and minority citizens of Hartford who are forced to live in conditions similar to those experienced by the individual low-income and minority Hartford plaintiffs. Plaintiffs in this case challenge decisions by the United States Department of Housing and Urban Development (hereinafter HUD) in approving community development grants awarded pursuant to the Housing and Community Development Act of 1974 to the following seven suburban communities, which surround Hartford: West Hartford, Glastonbury, Farmington, Windsor Locks, Vernon, Enfield and East Hartford. Plaintiffs maintain that HUD approvals of these awards are contrary to the basic civil rights requirements of the 1974 Act and of the regulations promulgated thereunder and in contravention of the dictates of the Fair Housing Act of 1968 and the Civil Rights Act of 1964. The plaintiffs maintain that HUD was legally obligated to disapprove the applications for funding by the communities in question and plaintiffs seek an injunction restraining HUD from dispersing any moneys under the seven grant awards.

JURISDICTION

2. Jurisdiction is invoked under 5 U.S.C. 701-706, 28 U.S. 1331, 1343(3) and (4), 1361, 2201, 2202; 42 U.S.C. 1981, 1982, 1983, 1985, 2000(d), 3601, et seq. and 4231, Executive Order 11063; and the Fifth Amendment to the United States Constitution.

PLAINTIFFS

3. The City of Hartford, Connecticut, is a municipal corporation organized and existing under the laws of the State of Connecticut, and brings this action both in its governmental capacity and its representative capacity as the legal representative of its inhabitants.

4. Richard Brown, Nicholas R. Carbone, John Cunnane, William A DiBella, [illegible], Allyn A. Martin, Richard Suisman, Margaret V. Tedone and Olga W. Thompson are members of the Court of Common Council of the City, and bring this action in their official capacity as City officials.

5. Miriam Jordan is a black low-income resident of Hartford. Plaintiff Jordan receives assistance from the Welfare Department of the State of Connecticut, and is currently

attempting to secure decent low-cost housing, since her landlord seeks to recover possession of her dwelling unit. Plaintiff Jordan has attempted to obtain low-income housing in several of the suburban communities who have applied for the Community Development moneys involved in this action, but has been unsuccessful in this effort, due to the lack of available low-income housing.

6. Fannie Mauldin is a black low-income resident of Hartford, and receives assistance from the Welfare Department of the State of Connecticut. Plaintiff Mauldin has resided in a suburban community of Hartford and was compelled to secure housing in the City after losing her home and after failing in her efforts to locate housing she could afford in the suburbs.

DEFENDANTS

7. Carla A. Hills is Secretary of the United States Department of Housing and Urban Development. She has overall responsibility for supervision and control of HUD programs and activities, including the final approval of all grants under the Housing and Community Development Act of 1974.

8. Harold G. Thompson is acting Regional Administrator for Region I, HUD. He has overall responsibility and supervision for HUD programs in Region I, which includes the Hartford metropolitan area.

9. Lawrence Thompson is Area Director of the Hartford area office of HUD. He has the responsibility for the initial review and approval of applications for grants under the Housing and Community Development Act of 1974 in the Hartford area.

10. The Department of Housing and Urban Development is an agency of the United States government which, pursuant to its authority under federal law, has undertaken to provide financial grants to the said seven suburban communities, pursuant to the provisions of the Housing and Community Development Act of 1974.

CLASS ACTION ALLEGATIONS

11. The plaintiffs described in Paragraphs 5 and 6 above bring this as a class action pursuant to 23 (a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on their own behalf and on behalf of all those similarly situated. The class represented consists of all black and Spanish speaking

persons and all persons of low and moderate income who are compelled to reside in deteriorating, inadequate, or overly-costly housing in the City of Hartford, Connecticut.

12. As to the class described in Paragraph 11: (1) the number of the members in said class is so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the class, said common questions being whether the determination by HUD to approve the grant applications for community development grants to the seven suburban communities in question violates basic civil right requirements of certain federal laws and regulations more fully described below; (3) the claims of the plaintiffs are typical of the claims of the class; (4) the plaintiffs will fairly and adequately protect the interests of the class as they seek no individual benefit from this action, but only a class benefit; (5) the defendants have acted or failed to act on grounds applicable generally to the class, thus making final relief appropriate with respect to the class as a whole; and (6) questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to the other available methods for a fair and efficient adjudication of this suit.

13. With respect to Rule 23(b)(3), plaintiffs aver that the members of the class have no interest in individually controlling prosecution of separate actions relevant to the controversy involved herein; that there is no other litigation already commenced concerning the controversy involved here; that it is desirable to concentrate litigation of the claims in this matter in this forum in order to insure a quick resolution of this matter, thereby assuring federal compliance with the housing and civil rights policies more fully described below; and that there are no forseeable difficulties likely to be encountered in the management of a class action.

FACTS

A. Community Development Grants

14. Congress, in the Housing and Community Development Act of 1974, Public Law 93-383, 42 U.S.C. 5301, et seq. (hereinafter referred to as the 1974 Act), established a regional system whereby local communities are allocated block grants for housing and community development purposes.

15. The 1974 Act provides for grants on an entitlement basis and on a discretionary basis.

16. Metropolitan cities and urban counties (counties with over 200,000 people in unincorporated areas which possess community development powers) are entitled to 100% grants according to a formula system taking into consideration population, poverty and housing overcrowding or the so-called "hold harmless method" which is designed to follow through on a community's past community development program.

17. All the grants in issue in this case are entitlement grants, as opposed to discretionary grants, and are awarded pursuant to the formula set forth in the statute.

18. HUD is precluded from approving any application for community development funds under the 1974 Act unless the applicant has submitted to the Secretary of HUD an application which sets forth "a three-year community development plan which identifies community development needs, demonstrates a comprehensive strategy for meeting those needs, and specifies both short and long-term community development objectives which have been developed in accordance with area-wide development planning and national urban growth policies". 42 U.S.C. 5304(a)(1).

19. The Act also mandates in 42 U.S.C. 5304(a)(4) that the applicant submit a housing assistance plan (hereinafter HAP) which:

(A) accurately surveys the condition of the housing stock in the community and assesses the housing assistance needs of lower-income persons (including elderly and handicapped persons, large families and persons displaced or about to be displaced) residing in or expected to reside in the community.

(B) specifies a realistic annual goal for the number of dwelling units or persons to be assisted, including (i) the relative proportion of new, rehabilitated, and existing dwelling units, and (ii) the sizes and types of housing projects and assistance best suited to the needs of lower-income persons in the community; and

(C) indicates the general locations of proposed housing for lower-income persons, with the objective of (i) furthering the revitalization of the community, including the restoration and rehabilitation of stable neighborhoods to the maximum extent possible; (ii) promoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of low-income persons; and (iii) assuring the availability of public facilities and services adequate to serve proposed housing projects;

Section 104(a)(4)

(Emphasis Supplied)

20. The Secretary of HUD is expressly prohibited from waiving compliance by the applicant with the HAP provisions. 42 U.S.C. 5304(b)(3).

21. The HAP requirements, as set forth in Paragraph 19, in furtherance of the congressional findings and purpose for the 1974 Act, 42 U.S.C. 5301(a) states:

> The Congress finds and declares that the Nation's cities, towns and smaller urban communities face critical social, economic and environmental problems arising in significant measure from--(1) the growth of population in metropolitan and other urban areas, and the concentration of persons of lower income in central cities...
>
> (Emphasis Supplied)

22. A primary objective of the community development sections of the law:

> is the development of viable urban communities by providing decent housing and a suitable environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, the federal assistance provided in this title is for the support of community development activities which are directed toward the following specific objectives -- the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods to attract persons of higher income.
>
> 42 U.S.C. 5301(c)(6)
>
> (Emphasis Supplied)

23. The mandate that local communities develop housing assistance plans in conjunction with community development grants, implements the goals and purposes of the federal Fair Housing Act of 1968 which provided that, "It is the policy of the United States to provide, within Constitutional limitation, for fair housing throughout the United States." 42 U.S.C. Section 3601.

24. The fair Housing law requires all federal agencies and departments to "administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this Title". 42 U.S.C. 3608(c) and (d)(5).

25. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d), bars discrimination in federal programs.

26. The 1974 Act requires the Secretary of HUD to disapprove any grant application where it is determined "on the basis of significant facts and data, generally available and pertaining to community and housing needs and objectives,... that the applicant's description of such need and objectives is plainly inconsistent with such facts or data..." 42 U.S.C. 5304(c) (1).

27. The 1974 Act further provides that grant applications are to be submitted for review and comment to an area-wide agency under rules and procedures established by the President pursuant to Title II of the Demonstration Cities and Metropolitan Act of 1966 and Title IV of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 5304(e)), thereby invoking regional agency review procedures established by the Office of Management and Budget in its Bulletin A-95. Under these procedures, federal applications for community development grants are to be reviewed by a regional clearinghouse with comments to be forwarded to HUD.

28. The Bulletin A-95 clearinghouse review agency for the Hartford area is the Capital Region Planning Commission (CPRC).

29. Pursuant to the A-95 procedures and the CRPC guidelines, plaintiff City of Hartford submitted negative comments for consideration on the grant applications by West Hartford, Glastonbury, Farmington, Windsor Locks, Vernon, Enfield and East Hartford. The City of Hartford in its comments specifically challenged the adequacy of the housing assistance plans submitted by the seven applicants and demanded disapproval of the grant applications.

30. The housing assistance plans submitted to HUD by these seven applicant communities set forth in Paragraph 28 are inadequate and fail to comply with the requirements of the 1974 Act, in that they: (a) do not properly assess local and regional housing needs of lower-income persons; (b) either ignore or inadequately assess the number of additional households expected to reside in the community; (c) in several cases give undue consideration to the housing needs of the elderly to the exclusion of the needs of lower-income families; (d) do not give maximum feasible priority in terms of the use of grant moneys to activities which will benefit low or moderate-income families; and (e) do not set forth sufficient annual housing goals.

31. The seven communities, in their applications for funding under the 1974 Act, signed nondiscriminatory assurances in compliance with the Act, which the defendant HUD accepted in the face of a history by these applicant communities of discriminatory housing, zoning and land use practices.

32. Plaintiff City advised and notified defendant HUD of the inadequacy of the applicant communities' housing

assistance plans and the history of discrimination outlined in Paragraphs 30 and 31.

33. Defendant HUD, approved the seven grant applications in violation of the purpose, intent and express mandates of the 1974 Act, and in contravention of the affirmative action requirement of the Fair Housing Act of 1968, and the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964.

34. The City of Hartford and its suburban towns constitute a metropolitan area within the scope, purposes, goals and protection of the 1974 Act, in that there exists in said metropolitan area a concentration of low-income and minority persons within the central City of Hartford who are experiencing serious housing problems and shortages, the isolation of low-income groups within a specified community and geographical area and the lack of spatial deconcentration of housing opportunities for persons of lower income.

35. The City of Hartford has a disproportionate number of residents who are in dire need of subsidized housing compared to its relatively affluent suburbs.

36. Hartford's population is experiencing increasing

social segregation in terms of race, income and age of residents.

37. Ninety percent of all minority households in the Hartford metropolitan area are located in the City of Hartford.

38. In 1970, Hartford had a population of 158,017, of which 35.5% were minority persons, which minority percentage has increased since 1970, and continues to increase. Approximately 80% of Hartford's current school population consists of minority students, as compared to approximately 17% in 1954.

39. In 1970, the median income of Hartford's families was $9,108, with 13.6% of those families living under the federal poverty level, as compared with a median income of $12,282 for all the families in the Hartford Standard Metropolitan Statistical Area (Hartford families included), with 4.9% of those families living under the federal poverty level (Hartford families included).

40. In 1970, the median income of Hartford residents was $9,108, with 17% of the families living under the federal poverty level.

41. The housing situation in Hartford is critical, in that currently the City's housing stock contains 16,000 units that require either replacement or substantial rehabilitation. In 1970, Hartford had a housing stock of 58,000 units. Hartford has an extremely low vacancy rate, and in 1970, it was estimated that 10,000 units were overcrowded.

42. The most serious housing problems exist in neighborhoods where median incomes are lowest and where the concentration of minority citizens is greatest. Cost of housing in these areas is excessive as compared to the residents' income.

43. Hartford is confronted with the enormous task of attempting to provide adequate shelter for the substantial proportion of families of low income who reside within its borders. Currently, Hartford's present 7,500 units of assisted housing for low and moderate-income families fulfills less than 50% of its current subsidized housing needs.

44. Hartford's plight with respect to providing new low-cost housing is further complicated by a scarcity of available vacant land upon which the City can undertake housing programs, in contrast to the developable land in the suburban towns.

45. Hartford's efforts to alleviate the serious housing dilemma is exacerbated by the erosion of its tax base, which has placed a severe strain on the municipality and the services it is able to render.

46. There has been a substantial exodus of manufacturing and commercial concerns to suburban areas and a general trend of new industry establishing itself outside the inner city. These concerns provide jobs for lower and moderate-income workers, many of whom are Hartford residents who have been unable to secure housing near their job sites because of the excessive cost of housing in these areas. This unavailability of low-cost housing has discouraged and deprived, and continues to deprive many low-income and minority individuals and families of the opportunity to compete for and fill available employment positions in Hartford's suburbs.

47. Of the 12,000 subsidized housing units for lower and moderate-income people in the entire Hartford metropolitan area, 61% are located in Hartford. Seventy-one percent of all low-rent public housing units are located in Hartford. In large part, subsidized housing units in the suburban areas are exclusively for the elderly.

48. Defendant's failure to comply with its statutory authority under the 1974 Act contributes towards maintaining and perpetuating segragation of the poor and minorities within the inner-City of Hartford and the dislocation of lower income persons from job opportunities in the suburbs.

49. As a result of the disproportionate number of poor persons who are compelled to reside in the City of Hartford, plaintiff City must provide additional social and educational services to meet the special needs of said economically disadvantaged citizens.

50. The need for said additional social and educational services has compelled plaintiff City Council to impose one of the highest effective tax rates of any town in the State of Connecticut, a tax rate substantially and disproportionately higher than that of any of the towns contiguous to the City.

51. The City's tax rate will continue to increase so long as the above-described pattern of discriminatory housing remains in full force and effect.

52. The aforesaid tax rate has reached a level or point at which the value of the City's taxable property has been, and is being, greatly diminished and jeopardized.

53. The deterioration of the City's tax base has compelled the plaintiff City Council to limit and constrict expenditures for all municipal services to a point whereby their level and quality are inferior, disparate and wholly unbalanced with those provided and paid for by any contiguous town.

54. The increasing tax rate has significantly contributed to the exodus of economically viable non-minority persons and families into the contiguous towns, to the City's fiscal detriment.

55. The defendants' approval of the seven suburban applications has aggrieved the plaintiff City and its officials by depriving them of the remedy set forth in the 1974 Act, as it relates to the deconcentration of low-income and minority persons in the central City, and the elimination of urban blight and slum.

56. The defendants' approval of the seven suburban applications has aggrieved the plaintiffs Mauldin and Jordan, and the class represented, by depriving them of the remedy set forth in the 1974 Act, as it relates to the deconcentration of low-income and minority persons in the central City, and the elimination of urban blight and slums, and compels them to continue to reside in inadequate, costly and segregated inner-City dwellings.

FIRST CAUSE OF ACTION

57. Plaintiffs reallege Paragraphs 1 through 56. Defendant HUD, in approving the community development grants, with respect to the seven applications set forth

above, has violated the provisions of the Housing and Community Development Act of 1974, Public Law 93-383, 42 U.S.C. 5301, et seq.

SECOND CAUSE OF ACTION

58. Plaintiffs reallege Paragraphs 1 through 57. Defendant HUD, in approving the seven community development grants, as set forth above, has failed in its duty to affirmatively promote fair and suitable housing, irrespective of race, color, creed or national origin, pursuant to 42 U.S.C. 3608(d)(5), and Executive Order 11603.

THIRD CAUSE OF ACTION

59. Plaintiffs reallege Paragraphs 1 through 58. Defendant HUD, in approving the seven community development grants, as set forth above, has violated 42 U.S.C. 2000(d).

FOURTH CAUSE OF ACTION

60. Plaintiffs reallege Paragraphs 1 through 59.

Defendant HUD, in approving the seven community development grants, as set forth above, has violated 42 U.S.C. Sections 1981, 1982 and 1985, and the Fifth Amendment to the Constitution of the United States.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand that this Court:

A. Assign this case for hearing at the earliest possible date and cause the case to be expedited in every way;

B. Declare that this case may proceed as a class action;

C. Declare that the actions of the defendants in approving the seven community grants set forth above violates the plaintiffs' rights, privileges and immunities under:

1. The Fifth Amendment to the Constitution of the United States;
2. 42 U.S.C. 5301, et seq.;
3. 42 U.S.C. 3608(d)(5);
4. 42 U.S.C. 2000(d); and
5. 42 U.S.C. Section 1981, 1982 and 1985;

D. Preliminarily and permanently enjoin the defendants

from disbursing or transferring any funds pursuant to the seven grant applications heretofore set forth until such time as said communities submit to the defendants appropriate documents indicating compliance with the provisions of 42 U.S.C. 5301, 42 U.S.C. 3608(d)(5), 42 U.S.C. 2000(d); and

E. Grant such other and further relief as would appear equitable and just, and that the Court will allow the cost herein, including reasonable attorney's fees, against the defendants.

PLAINTIFFS

By Mary R. Hennessey
Mary R. Hennessey
Attorney for Plaintiffs
Jordan and Mauldin

By Barry S. Zitser
Barry S. Zitser,
Attorney for Plaintiffs
City and members of the
Court of Common Council.

A 28

MOTION FOR PRELIMINARY INJUNCTION

IN THE UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

* *

THE CITY OF HARTFORD, CONNECTICUT, ET ALS *

Plaintiffs *

vs. * CIVIL ACTION NO.

CARLA A. HILLS, ET ALS *

Defendants *

* *

MOTION FOR ~~TEMPORARY RESTRAINING ORDER~~ PRELIMINARY INJUNCTION

The plaintiffs hereby move that a temporary restraining order issue in this matter against the defendants to enjoin them from disbursing or transferring any funds pursuant to the seven grant applications heretofore set forth until such time as said communities submit to the defendants' appropriate documents indicating compliance with the provisions of 42 U.S.C. 5301, 42 U.S.C. 3608(d)(5), 42 U.S.C. 2000(d).

PLAINTIFFS

By Mary R. Hennessey

Mary R. Hennessey
Attorney for Plaintiffs
Jordan and Mauldin

By Barry S. Zitser

Barry S. Zitser
Attorney for Plaintiffs
City and Members of the Court of
Common Council

A 29

Motion for Preliminary Injunction

IN THE UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

* *

THE CITY OF HARTFORD, CONNECTICUT, ET ALS *

Plaintiffs *

vs. * CIVIL ACTION NO.

CARLA A. HILLS, ET ALS *

Defendants *

* *

ORDER TO SHOW CAUSE ~~AND TEMPORARY RESTRAINING ORDER~~

On the motion of plaintiffs City of Hartford, et al, and upon the complaint in this action and the affidavits of Jonathan Coleman and William Slitt, annexed hereto and it appearing from the allegations and the papers submitted by the plaintiffs that the defendants may be engaged in acts, practices and a course of conduct which constitute violations of 42 U.S.C. 5301, 42 U.S.C. 3608(d)(5), 42 U.S.C. 2000(d) and the Fifth Amendment to the United States Constitution, and the plaintiffs having made no prior application for relief, it is hereby

ORDERED, that the defendants Carla A. Hills, et al, show cause, if there be any, to a judge of this Court at o'clock in the noon on the day of , 1975, in Room of the United States

Courthouse, 450 Main Street, Hartford, Connecticut, or as soon thereafter as counsel may be heard, why a preliminary injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure, should not be granted, enjoining said defendants, their employees, agents, and successors, and all those acting in concert or participation with them, from dispersing or transferring any funds pursuant to seven (7) grant applications from the suburban communities of West Hartford, Glastonbury, Farmington, Windsor Locks, Vernon, Enfield and East Hartford, to the defendants for funding under the Housing and Community Development Act of 1974, until such time as said communities submit to the defendants appropriate documents indicating complaince with the provisions of the aforesaid statutes and Constitution pending a final determination by this Court on this matter; and it is further

ORDERED, that pending determination of the plaintiffs' motion for a preliminary injunction, the defendants and each of them, their employees, agents and successors, and all those acting in concert or participation with any of them, are enjoined from dispersing any funds pursuant to the seven (7) grant applications set forth above.

Service of the within order shall be effected upon the defendants or their attorneys herein on or before o'clock on 1975.

Dated at Hartford, Connecticut, this day of , 1975.

United States District Judge

MEMORANDUM OF DECISION ON PRELIMINARY INJUNCTION

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ORPORATION COUNSEL

CITY OF HARTFORD, ET AL :

v. : CIVIL NO. H-75-258

CARLA A. HILLS, ET AL :

MEMORANDUM OF DECISION ON PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

The plaintiffs in this action are the City of Hartford, Connecticut; several City officials; and a class consisting of low-income and minority residents of the City of Hartford who presently live in inadequate, deteriorating or prohibitively expensive housing.[1/] On August 11, 1975 they filed a complaint, seeking declaratory and injunctive relief, against the Secretary and other officials of the Department of Housing and Urban Development, as well as the Department itself. The complaint challenged HUD's approval of grant applications by seven suburban Connecticut communities[1A/] made under Title I

1/ The standing of the class action plaintiffs is not implicitly resolved by this ruling, but is reserved for later determination. The City of Hartford clearly has standing because of its interest in the funds at issue. See infra note 9.

1A/ The towns whose grant applications are alleged to be improper in one or more respects are: East Hartford, Enfield, Farmington, Glastonbury, Vernon, West Hartford, and Windsor Locks.

of the Housing and Community Development Act of 1974.[2/] The complaint alleged that the defendant officials had abused their discretion and failed to live up to their obligations under this 1974 law, as well as the 1964 Civil Rights Act and the 1968 Fair Housing Act. The plaintiffs allege that Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000(d), has been violated by HUD's approval of the grants in spite of the seven towns' "history of discriminatory housing, zoning and land use practices." The claims under the Fair Housing Act of 1968, 42 U.S.C. § 3601 et seq., are based on an alleged failure of HUD to "administer affirmatively" the community development program. The plaintiffs also raise claims under 42 U.S.C. §§ 1981, 1982 and 1985, and the fifth amendment.[3/] On August 26, 1975 the seven communities whose grants were being challenged were joined as additional defendants.

The plaintiffs have moved for a preliminary injunction,

2/ Adopted as P.L. 93-383, the sections which are at issue here are now found at 42 U.S.C. § 5301 et seq.

3/ This court's jurisdiction has been invoked on each of these claims, under 28 U.S.C. §§ 1331, 1343(3) and (4), and 1361. The plaintiffs also seek judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

the defendants to dismiss, or for summary judgment.[4/] The hearing on these motions was consolidated with an accelerated trial on the merits, and involved over two days of testimony, supplementing an already voluminous administrative record. At the conclusion of this hearing, on September 24, 1975, the court reserved decision on the pending motions.

One of the offices of the preliminary injunction is "to maintain the status quo pending a final determination of the merits." Checker Motors Corp. v. Chrysler Corp., 405 F.2d 319, 323 (2d Cir. 1969). The standards governing the issuance of such interim relief are well-established; the part seeking the injunction must combine a clear showing of probable success on the merits with the possibility of irreparable injury, or else raise substantial questions involving the merits, while demonstrating that the balance of hardships tips sharply in his/her favor. In ruling on plaintiffs' motion, the court may take into account the interests of the public as well as those of the parties before it. Stamicarbon, N.V. v. American Cyanamid Co., 506 F.2d 532, 537 (2d Cir. 1974). Such considerations have been held to be particularly appro-

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4/ The defendants moved to dismiss, pursuant to Rule 12(b), on several grounds, including lack of standing and failure to state a claim. In the alternative, they moved for summary judgment, pursuant to Rule 56.

priate in cases such as this one, where there is a strong public interest involved. PRIDE v. Community School Board of Brooklyn, N.Y. Sch. D. #18, 482 F.2d 257 (2d Cir. 1973). In this case:

> "More is involved than the settlement of a private controversy without appreciable consequences to the public. . . . Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." Virginian Ry. Co. v. System Federation, 300 U.S. 515, 552 (1937).

The testimony at the hearing revealed that HUD has already issued letters of credit to the seven towns whose community development block grants are being challenged. Thus, these defendants are now free to draw upon the Treasury Department for the very funds which are the subject of this litigation. Some drafts have already been made, and the defendants have declined to stipulate that they will refrain from further drafts pending this court's ruling on the merits. The defendants argue that this situation does not constitute the sort of irreparable injury necessary to justify the interim relief requested, stating that 42 U.S.C. § 5311(a) and (b) provides adequate protection for the plaintiffs'

interests.[5/] If they are correct, the plaintiffs would have an adequate legal remedy for the harm that might befall them during the hiatus between hearing and final decision, and their request for an injunction ought to be denied.

I find, however, that this statutory recoupment procedure is not sufficiently protective of the plaintiffs' interests. First, the repayment of grant moneys would be made out of future community development grants, through a reduction of payments to the recipient community in future years. Thus, if the plaintiffs prevail but the funds now in dispute have already been expended, a double loss will fall upon the plaintiffs. Not only will <u>these</u> funds be gone, expended improperly on allegedly unneeded or inappropriate projects,[6/] but <u>future</u> funds, which would have been available for projects properly within the act (and thus beneficial to plaintiffs' interests) will also be lost. Second, the

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5/ This section establishes a procedure by which the Secretary may enforce her evaluations of grantees' performances by withholding or recouping funds. The section also establishes a procedure for the applicant/grantee to challenge such adverse determinations in the courts. Here, however, the plaintiffs challenge approved disbursements of funds to others, and want this court to overturn those decisions by the Secretary.

6/ The plaintiffs contend that the Secretary's approval of these grant applications was improper, even under the restrictive review standards of "plainly inconsistent" and "plainly inappropriate" set forth in 42 U.S.C. § 5304(c)(1) and (2).

statute[7] and regulations[8] provide for the reallocation of funds from grants which are disapproved by the Secretary for use "first, in any metropolitan area in the same State . . . ." If the grants were ultimately to be disapproved, then Hartford might be able to obtain some of these very funds. Without interim relief in the nature of a preliminary injunction, however, there is no guarantee that any of these funds will be available at the time the court renders its decision.[10]

In its effort to balance the equities, this court must also consider what the impact of a preliminary injunction would be on the various defendants. The federal defendants cannot possibly be harmed by the granting of interim relief, since they have already relinquished control over the funds by approving the grants and issuing letters of credit. The seven suburban communities stand in a somewhat different

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7/ 42 U.S.C. § 5306(e).

8/ 24 C.F.R. § 570.107(a).

9/ This phrase sets forth the priority which the Secretary is to follow when (and if) she reallocates such funds.

10/ Thus, this situation is unlike that in Sampson v. Murray, 415 U.S. 61 (1974), where the Supreme Court found the plaintiff's interests to be amply protected by the Back Pay Act, 5 U.S.C. § 5596.

position. They have already commenced work on some of the projects in question, and have (in several cases) begun to draw upon the funds. In fact, a number of the projects proposed by each community were described as of "particular urgency" 11/ in their grant applications. These factors merely emphasize the need of all parties for a speedy resolution of these issues. The defendant communities will hardly suffer greatly from a short interruption, even of those projects already underway, to enable this court to properly resolve the difficult and substantial questions of administrative discretion and obligation, as well as statutory construction and constitutional interpretation, raised by the plaintiffs. 12/ Should the defendant communities ultimately prevail, the funds will be available once again from the Treasury Depart-

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11/ The statute permits projects certified as being of "particular urgency" to be approved even though they may not serve low and moderate income persons "principally" enough to otherwise qualify for the block grant program. 42 U.S.C. § 5304(b)(2).

12/ Similar issues were recently before the Court of Appeals for this circuit in Evans v. Lynn, ___ F.2d ___, Slip Op. No. 157 (June 2, 1975). That decision is now set down for a rehearing en banc, but only as to the standing determinations made by the original panel. Judges Oakes, Gurfein, and Moore (the original panel) all acknowledged the difficulty presented by the merits of the issues.

ment; there is no risk to them that the granting of interim relief would effectively end the litigation. On the other hand, a denial of interim relief could well result in the defendants' having obtained all they seek from the litigation before it is even decided. See Developments in the Law--Injunctions, 78 Harv. L. Rev. 994, 1056 (1965), where the author points out that one of the issues raised by a motion for a preliminary injunction is "how best to create or preserve a state of affairs such that [the court] will be able . . . to render a meaningful decision for either party." Preliminary injunctive relief may be necessary, for example, to prevent one party from being able to moot out the other's claim by acting quickly. Viewing the situation presented here from this perspective, I find that the issuance of a preliminary injunction is necessary to insure that there will be something left to decide.

Accordingly, the defendants East Hartford, Enfield, Farmington, Glastonbury, Vernon, West Hartford, and Windsor Locks are preliminarily enjoined from drawing upon the Treasury, or spending in any fashion, the funds granted to them pursuant to Title I, the Community Development sections of the Housing and Community Development Act of 1974, 42

U.S.C. § 5301 et seq. This injunction shall remain in effect until further order of this court.

The plaintiff City of Hartford is a responsible party, and this order only grants injunctive relief pending my ruling on the merits, therefore no bond will be required.

SO ORDERED.

Dated at Hartford, Connecticut, this 30th day of September, 1975.

M. Joseph Blumenfeld
United States District Judge

MEMORANDUM OF DECISION OF JANUARY 28, 1976

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CITY OF HARTFORD, ET AL	:	
v.	:	CIVIL NO. H-75-258
CARLA A. HILLS, ET AL	:	

MEMORANDUM OF DECISION

I.

This case is the culmination of a confrontation between the City of Hartford and seven of its suburban towns. At issue is the propriety of the decision by the United States Department of Housing and Urban Development (HUD) to approve federal community development grants to these towns. The plaintiffs contend that this approval was improper, because of the emphasis in the applications on non-housing expenditures, and upon local rather than regional needs.[1/]

The plaintiffs are the City of Hartford, Connecticut; eight city officials;[2/] and two representatives of a class

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1/ The funds are available under the Housing and Community Development Act of 1974. Pub. L. No. 93-383; 88 Stat. 633; 42 U.S.C. §§ 5301 et seq. (1975 Supp.).

2/ All eight are members of the Hartford Court of Common Council--the city's governing body.

consisting of minority, as well as low and moderate income, persons now living "in deteriorating, inadequate, or overly-costly housing in the City of Hartford, Connecticut."[3/] The plaintiffs seek declaratory and injunctive relief against the seven towns,[4/] the Secretary and other officials[5/] of the Department of Housing and Urban Development, and the Department itself. The plaintiffs claim that the defendant officials have failed to live up to their obligations under Title I of the Housing and Community Development Act of 1974,[6/] Title VIII (Fair Housing) of the Civil Rights Act of 1968,[7/]

3/ Paragraph 11 of the Complaint. These plaintiffs' Motion for Permission to Proceed In Forma Pauperis was granted on August 11, 1975.

4/ The seven towns whose grant applications are challenged are: East Hartford, Enfield, Farmington, Glastonbury, Vernon West Hartford, and Windsor Locks. The towns were ordered joined, as additional defendants, on the motion of the United States Department of Housing and Urban Development.

5/ In addition to the Secretary, both the Regional Administrator and Area Director of HUD are named as defendants. All three are sued only in their official capacities.

6/ Cited in note 1 supra.

7/ Pub. L. No. 90-284; 82 Stat. 81; 42 U.S.C. § 3601 et seq.

and Title VI of the Civil Rights Act of 1964.[8] They also assert constitutional claims under the civil rights statutes[9] and the fifth amendment.

Specifically, the plaintiffs claim that the federal defendants abused their discretion in that they approved applications for community development funds under the 1974 Act although the statutory review standards mandated that the applications be disapproved. Similarly, they claim that HUD contravened Title VIII of the 1968 Act by failing to "affirmatively administer" the community development program in order to expand low and moderate income housing opportunities in Hartford's suburbs. Finally, they allege that HUD violate Title VI of the 1964 Act by approving these community development grant applications "in the face of a history by these applicant communities of discriminatory housing, zoning, and land use practices. . . ."[10].

A hearing was held on the plaintiffs' motion for a preliminary injunction, and the defendants' motion to dismiss or in the alternative for summary judgment. Shortly there-

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[8] Pub. L. No. 88-352; 78 Stat. 252; 42 U.S.C. § 2000d et seq.

[9] 42 U.S.C. §§ 1981, 1982, and 1985.

[10] Paragraph 31 of the Complaint.

after the defendants were preliminarily enjoined from "spending in any fashion" the funds at issue in this case. Later that order was modified to permit the release of urgently needed funds, most of which were expended for housing-related purposes. At the hearing on the modification request all parties agreed that final judgment could be entered on the basis of the record as it had been developed up to that point and as it would be supplemented by several affidavits. All of those affidavits have now been filed, and the case is before me for a decision on the merits.[11/]

II.

Jurisdiction is present under 28 U.S.C. § 1331 since the grants which are the subject of this controversy total well over $10,000. Jurisdiction is also present under the Administrative Procedure Act, 5 U.S.C. § 701 et seq. Evans v. Lynn, No. 74-1793 (2d Cir. June 2, 1975) (Gurfein, J.

11/ The United States has recently filed a Supplemental Motion to Dismiss or in the Alternative for Summary Judgment, based upon newly-proposed HUD regulations. 24 C.F.R. § 570.303; 41 Fed. Reg. 2347 (Jan. 15, 1976). Although these regulations concern the "expected to reside" section of the HAP for future grant applications, they were not, obviously, used in evaluating the grants challenged in this case. Accordingly, I do not consider them in this decision.

concurring), rehearing en banc granted August 11, 1975. A class action is not necessary in this case, since full injunctive and/or declaratory relief awarded on behalf of the named plaintiffs will also benefit their class. 3B Moore's Federal Practice, § 23.40 (Supp. 1974). Furthermore, the definition of the class is not sufficiently detailed to warrant certification. Warth v. Seldin, 422 U.S. 490, 494-95 n.5 (1975).

III.

The plaintiffs are faced, at the threshold, with a challenge to their standing to bring this action. The defendants argue that all of the plaintiffs lack standing, and ask that the complaint be dismissed for failure to state a claim upon which relief may be granted. I decline to accept that invitation, because I find that several of the plaintiffs do, in fact, possess standing to bring this action

The issue of the standing of the City of Hartford has already been addressed twice by this court, and both times

I have ruled that the City does have standing to sue.[12/] It may be helpful, however, to recount briefly the basis upon which that conclusion was reached.

The Housing and Community Development Act of 1974 speaks directly to the problems confronting our urban areas. The initial clauses of the statute read:

> "(a) The Congress finds and declares that the Nation's cities, towns, and smaller urban communities face critical social, economic, and environmental problems arising in significant measure from--
>
> (1) the growth of population in metropolitan and other urban areas, and the concentration of persons of lower income in central cities; and
>
> (2) inadequate public and private investment and reinvestment in housing and other physical facilities, and related public and social services, resulting in the growth and persistence of urban slums and blight and the marked deterioration of the quality of the urban environment.
>
> "(b) The Congress further finds and declares that the future welfare of the Nation and the well-being of its citizens depend on the establishment and maintenance of

12/ Memorandum of Decision on Plaintiffs' Motion for a Preliminary Injunction, September 30, 1975; and Ruling on Defendants' Motions to Reconsider and to Amend Preliminary Injunction, October 29, 1975. The City participated in the A-95 administrative review process, and may also have "person aggrieved" standing under 5 U.S.C. § 702. In light of my prior decisions, I need not resolve that issue.

> viable urban communities as social, economic, and political entities . . . .
>
> "(c) The primary objective of this chapter is the development of viable urban communities, by providing decent housing, and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." 13/

The plaintiffs have filed a number of affidavits detailing the problems facing the City of Hartford.[14] The figures

13/ 42 U.S.C. § 5301 (1975 Supp.).

14/ The affidavits submitted by the plaintiffs strongly support the view that Hartford is one of the American central cities, suffering from a concentration of lower-income persons, that the Act was designed to benefit. The City's Department of Social Services administers between 40 and 45 per cent of all town general assistance cases in the entire state, and about 35,000 City residents receive either town general assistance or state public assistance. Plaintiffs' Exhibit 11, Affidavit of Joseph Alleyne, Director of the Department of Social Services, City of Hartford, September 18, 1975. Furthermore, over half of the City's residents either receive such assistance or live exclusively on social security or unemployment benefits. In July 1975, the City's unemployment rate stood at 13.6 per cent. The 1970 Census found that Hartford's population was 35.5 per cent minority, and that percentage has increased since then. The school population now is over 80 per cent minority. Plaintiffs' Exhibit 9, Affidavit of Richard Suisman, Member, Hartford Court of Common Council, September 18, 1975.

The housing situation in Hartford is bleak. There are now 16,000 substandard, deteriorating or dilapidated units in the City. About one-half of the City's families pay over 25 per cent of their annual income for shelter. In addition, most of the subsidized housing in the Greater Hartford Region is already located in the City of Hartford. Hartford has 61 per cent of these units although it has only 24 per cent of the total population of the region. Specifically, 71 per

contained therein have not been challenged by the defendants. Thus, there can be no doubt that the statute was intended to

14/ cont'd

cent of the low-rent public housing, 46 per cent of the moderate-rent public housing, and 59 per cent of the privately-sponsored subsidized housing units are located within the City. And the majority of the subsidized moderate rental public housing units located within the suburbs are for elderly housing. Plaintiffs' Exhibit 10, Second Affidavi of William Slitt, Director of Housing, City of Hartford, September 16, 1975.

The condition of the City of Hartford, described above, stands in marked contrast to that which prevails in its suburban towns, as is demonstrated by a report prepared for HUD by Richard P. Nathan, a Senior Fellow at The Brookings Institution. The Record of The New Federalism: What It Means For The Nation's Cities, The Brookings Institution, Washington, D. C., September 30, 1974. Exhibit A to Plaintiffs' Memorandum In Opposition to Motion to Dismiss or in the Alternative for Summary Judgment. This report uses six factors to compare conditions in 58 core cities with those i their suburbs. The six factors considered were: unemployme population age; educational levels; per capita income; poverty percentage; and housing overcrowding percentage. The disparity between Hartford and its suburbs was the third worst, overall, in the entire nation; only Newark, New Jersey and Cleveland, Ohio ranked worse. The Hartford region had the greatest disparity in the country on the poverty ratio scale--a city/suburb comparison of the relative percentages of families with annual incomes of under 125 per cent of the federal low-income standard for that family size. Hartford was second worst on the limited education ratio scale--the percentage of the population over age 25 with less than a 12th-grade education. It was also second worst on housing overcrowding, defined as occupancy over one person per room. The City was third worst on both the unemployment and per capita income comparisons. However, it was in the middle-range of American cities in Standard Metropolitan Statistical Areas (SMSA) of over 500,000 population on the dependency

ameliorate the problems facing the City of Hartford. The plaintiffs' allegations, and the statutory language, make it clear that the City falls within the "zone of interests" created by the Act. Cf. Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150 (1970).

Similarly, the statute itself demonstrates that the second prong of the standing test--the "injury-in-fact" requirement--is met here. The statute explicitly provides for the reallocation of funds from grants which are dis-

14/ cont'd
ratio scale--the percentage of the population under 18 or over 64 years of age.

These statistics are particularly relevant to the issues raised by this lawsuit. The last factor suggests that there is a pool of working-age persons now living in the City, but the unemployment ratio tells us that the jobs which exist are out in the suburbs. The study also indicates that there is a critical housing shortage in the City, resulting in severe overcrowding. This housing crush could be relieved by a movement to the surrounding towns, perhaps motivated by a search for employment opportunities. This sort of exodus may well have been what Congress anticipated when it established the "expected to reside" category on the Housing Assistance Plan, and emphasized the importance of "planned or existing employment facilities" to the calculations required to estimate this aspect of a town's housing needs for lower-income persons. See Part V infra.

The disparities reflected in these figures assume even greater significance when one realizes that Springfield, Massachusetts--another good-sized central city, with its attendant problems, and part of the Hartford SMSA--was included in the "suburban" figures for purposes of this study by The Brookings Institution!

approved, "first, in any metropolitan area in the same State . . . ." 42 U.S.C. § 5306(e) (1975 Supp.). Thus, if the plaintiffs are successful in their effort to overturn HUD's approval of these grant applications, and if the funds at issue are made available for reallocation, Hartford will be eligible to receive them, and will have a strong statutory priority. This priority is strengthened by the current HUD Regulations. As I noted in my decision modifying the preliminary injunction previously entered in this case,[15/] one regulation in particular, 24 C.F.R. § 570.409(f)(1)(i); 40 Fed. Reg. 42347, 42349 (September 12, 1975), requires that such reallocation funds be disbursed with first priority going to "the same metropolitan area." Thus, the City of Hartford has clearly suffered a judicially cognizable injury, sufficient to confer standing to sue, if the grant applications were approved in a manner contrary to law. It certainly stands to benefit in a tangible way from this court's intervention, thereby meeting the Supreme Court's most recent formulation of the "injury-in-fact" requirement. Warth v. Seldin, 422 U.S. 490 (1975).

The defendants' challenge to the standing of the city officials and the individual plaintiffs presents other

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15/ Ruling on Defendants' Motions, cited at note 12 supra.

problems. The members of the Court of Common Council sue onl in their official capacities. Their claim of standing depends upon their alleged inability to perform their official duties and responsibilities because of the federal government's improper approval of the grant applications.[16/] They point out that they have taken an oath to uphold the United States Constitution, and that they challenge HUD's approval on constitutional as well as statutory grounds. From this they conclude that they should be recognized as having standing to sue, citing Board of Education of Central School District No. 1 v. Allen, 392 U.S. 236 (1968). However, Allen involved constitutional issues, specifically, a constitutional challenge to a state law. The plaintiff officials were torn between their duty to implement the state law and their duty to uphold the federal constitution.[17/] Here, by contrast, the city officials are not challenging any allegedly unconstitutional duties placed upon them. Rather, they seek to overturn the actions of the defendant HUD officials, based, in part, on a constitutional challenge. Allen does not stand for the proposition that anyone who has once taken, or is

16/ Plaintiffs' Exhibit 9, Affidavit of Richard Suisman, September 18, 1975, ¶ 32.

17/ 392 U.S. at 241 n.5.

currently bound by, an oath to uphold the federal constitution has standing to challenge actions of third parties simply because they are similarly bound. These city officials have no cognizable legal interest in the outcome of this suit. Therefore, the motion to dismiss will be granted with respect to the members of the Court of Common Council of the City of Hartford.

The situation of the two low-income minority plaintiffs is more difficult. The question is whether standing to sue can be fashioned on the basis of these two characteristics. To determine the answer, it is necessary to analyze exactly what is being challenged, and what exactly is the basis of the challenge.

The plaintiffs challenge administrative action: HUD's approval of the grants to the seven suburban towns. They allege that this approval was contrary to the department's responsibilities under a battery of federal statutes, chief among them the Housing and Community Development Act of 1974 and Title VIII, the Fair Housing Title, of the 1968 Civil Rights Act. As poor persons living in Hartford in substandard housing,[18/] they are certainly within the "zone of

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18/ Affidavits of Miriam Jordan and Fannie Mauldin, July 1, 1975.

interests" created by the 1974 Act. The opening section of that Act is replete with the phrase "principally for persons of low or moderate income," emphasizing whom the Act was intended to benefit. And that same section also highlights the key role housing was to play in Congress' goal of preserving viable urban communities. Furthermore, as members of minority groups, plaintiffs are entitled to the protection of the federal civil rights acts.[19/]

The defendants argue that the decision in Warth v. Seldin, 422 U.S. 490 (1975) is dispositive of the standing issue, and requires that the individual plaintiffs also be dismissed for failing to state a claim. But this case is not controlled by Warth. There the plaintiffs raised only constitutional challenges to the zoning decisions of local officials. Here statutory claims are also at issue, and, as the Supreme Court noted in Warth, "the actual or threatened injury required by Article III may exist solely by virtue of 'statutes creating legal rights, the invasion of which

19/ Indeed, even non-minorities have standing to sue under the broad "person aggrieved" standard Congress selected for suits brought under the 1968 Fair Housing Act. Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205, 212 (1972).

creates standing . . . .'"[20] In this Circuit the controlling decision is Evans v. Lynn, No. 74-1793 (2d Cir. June 2, 1975), rehearing en banc granted August 11, 1975. There the plaintiff class consisted of

> "minority residents of Westchester County who reside in racially concentrated areas of the county and are constrained to do so because the failure of federal agencies to perform their affirmative duties permits the maintenance of a growing pattern of racial residential segregation . . . ."

Evans v. Lynn, Slip Op. 3885, 3888. They challenged the approval, by HUD and the Bureau of Outdoor Recreation, of federal grant moneys to a sewer district within the Town of New Castle, and to the Town itself.[21] The Court of Appeals, in a 2-1 decision, held that the low-income plaintiffs had stated a judicially cognizable claim sufficient to withstand a motion to dismiss for lack of standing. Judge Oakes, writing for the court, held that the plaintiffs were within the "zone of interests" created by Title VIII, in that they challenged federal agency action as, allegedly, not complying

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[20] 422 U.S. at 500, citing Linda R.S. v. Richard D., 410 U.S. 614, 617 n.3 (1973).

[21] The programs which authorized those grants have since been consolidated into the unified community development program at issue in this case.

with the "affirmative duty" upon federal agencies to administer their programs in a manner designed to enhance fair housing opportunities. In his concurring opinion, Judge Gurfein held that the plaintiffs had standing under the Administrative Procedure Act,[22/] in order "to raise the question of whether the Secretary has failed to make the inquiries" implied by this affirmative duty. Evans v. Lynn, Slip Op. 3885, 3918.

The grants in this case were approved by HUD. Although the statute sets forth specific standards by which the grants are to be tested, the plaintiffs allege that they were not correctly implemented by HUD.[23/] The statute clearly has, as one of its objectives, the spatial deconcentration of lower-income groups, particularly from the central cities. Congress apparently decided that this was part of the solution to the crisis facing our urban communities. These two plaintiffs are among this very group of persons, persons for whom Congress indicated it might be beneficial

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22/ 5 U.S.C. § 702.

23/ These standards may be found at 42 U.S.C. § 5304(c) (1975 Supp.).

to relocate outside the central city. [24] Part of the grant application process involves an assessment by each community of its needs, and the development of a plan to meet those needs. If the needs stated in the application are not a true reflection of the community's needs, or if the projects for which the funds are to be spent are not calculated to meet the community's needs, the Secretary is required to disapprove the grant application. The granting process, as disclosed in the administrative record compiled during the review of these seven grant applications, [25] involved a flexible review by HUD. The applications were studied and commented upon by HUD personnel, who evaluated the needs and projects as set forth in the applications. In many instances, more information was requested from applicants, or their responses were invited to HUD's criticisms or suggestions. In several instances the applicant communities responded to comments and criticism from HUD by revising their applications. If approval was improper, the plaintiffs may well have lost the benefits of re-directed priorities by

[24] 42 U.S.C. § 5301(c)(6) (1975 Supp.).

[25] The administrative records for all seven grant applications have been incorporated into the record.

the applicant towns, or, perhaps, the benefits of projects implemented by the City of Hartford with any reallocated funds. Thus, both the "zone of interests" and "injury-in-fact" aspects of standing required by Warth are present here. Additionally, as Judge Gurfein noted, the plaintiffs have standing under the APA as persons aggrieved by agency action to permit the court to decide what HUD's obligations are, and whether it has met them.

Similarly, Title VIII itself established an affirmative obligation upon HUD, an obligation which doubtless inures to the benefit of these plaintiffs. The extent of this obligation, and the issue of whether or not it was satisfied in this case, are issues which go to the merits.[26/] As Judge Oakes pointed out in Evans, "it is enough if a viable claim of non-performance is made." Slip Op. 3885, 3891 n.8. For the reasons stated in his opinion in that case, I agree that the plaintiffs here possess standing to sue under Title VIII. Here, as there, we have plaintiffs who claim injury from purposeful administrative inaction. Here, as there, the improper approval of grants may perpetuate existing patterns of racial (and economic) segregation. This claim under the 1968 Civil Rights Act distinguishes Warth v.

26/ See Parts IV and V infra.

Seldin, as noted by Judge Zampano in Accion Hispana v. Town of New Canaan, Civ. No. B-312 (D. Conn. August 18, 1975). The plaintiffs have alleged sufficient injury to their protected interests to permit them to bring their claims into court.

IV.

As has been made clear by the preceding discussion, this case involves the new statutory framework for community development funding adopted by Congress in 1974. Title I of the Housing and Community Development Act of that year consolidated ten categorical grant programs into a single block grant program.[27/] A three-year community development plan

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27/ The new Community Development Program replaced the following ten development programs administered by the Department of Housing and Urban Development: the Public Facilities Loan Program authorized by Title II of the Housing Amendments of 1955; the Open Space Program authorized by Title VII of the Housing Act of 1961; the Planning Advance Program authorized by Sec. 702 of the Housing Act of 1954; the Water-Sewer, Neighborhood Facilities and Advanced Land Acquisition Program authorized under Title VII of the Housing and Urban Development Act of 1965; the Urban Renewal, Code Enforcement and Neighborhood Development Programs authorized by Title I of the Housing Act of 1949; and the Model Cities Program authorized by Title I of the Demonstration Cities and Metropolitan Development Act of 1966.

was required as part of the application, and appropriations were authorized through Fiscal Year 1977. Congress intended to streamline the administration of these federal programs,[28] by minimizing HUD's "front-end" review, substituting annual performance monitoring at the time when the future funding levels of grants to the particular community would be determined.[29] In place of the elaborate administrative review by federal officials which preceded grant approval under the ten programs, the new statute establishes a 75-day period, within which HUD must disapprove the application, or else it is automatically approved.[30] Furthermore, the statute directs HUD to approve the grant unless certain very limited conditions exist: (1) the community's true needs are not reflected in the application; or (2) the proposed projects will not meet the needs described; or (3) the proposal does not comply with other legal requirements.[31]

28/ 42 U.S.C. § 5301(b)(3) (1975 Supp.). See also, H. R. Rep No. 93-1114, 93d Cong., 2d Sess. 2, 3 (1974); S. Rep. No. 93-693, 93d Cong., 2d Sess. 48, 49 (1974).

29/ 42 U.S.C. § 5304(d) (1975 Supp.).

30/ 42 U.S.C. § 5304(f) (1975 Supp.).

31/ 42 U.S.C. § 5304(c) (1975 Supp.).

The new Act also gave local communities a greater role in determining how to spend their federal funds by requiring citizen participation and expanding the range of eligible activities. All the projects, however, must be directed toward accomplishing the central objective of the legislation

> "the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." 32/

Congress did not leave local communities with merely this broad statement of purpose. Rather, it legislated seven specific goals, thereby establishing national priorities to govern the use of community development funds. The Act also sets forth an extensive list of eligible activities, and requires that HUD disapprove applications for grants for any project not so qualified.33/ Three of the seven specific goals explicitly urge that moneys be spent on behalf of per-

32/ 42 U.S.C. § 5301(c) (1975 Supp.).

33/ 42 U.S.C. § 5305 (1975 Supp.) describes the eligible activities; 42 U.S.C. § 5304(c)(3) (1975 Supp.) requires disapproval of any application that proposes ineligible activiti Clarifying regulations were issued recently. 24 C.F.R. § 570.200 et seq.; 41 Fed. Reg. 2765 (January 19, 1976).

sons of low and moderate income.[34] Two speak directly,[35] and three more indirectly,[36] to the housing needs of that segment of the populace.

The plaintiffs' position is that one of these Congressional goals, in particular, is of great importance in this lawsuit--that concerned with reducing:

> "the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income . . . ." [37]

They argue that this is one of the primary goals of the Act, and that it was to be achieved, at least in part, through another aspect of the Act--the Housing Assistance Plan.[38]

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[34] 42 U.S.C. § 5301(c)(1), (3), (4) (1975 Supp.).

[35] 42 U.S.C. § 5301(c)(3) and (6) (1975 Supp.).

[36] 42 U.S.C. § 5301(c)(1), (2), (5) (1975 Supp.).

[37] 42 U.S.C. § 5301(c)(6) (1975 Supp.).

[38] The HAP is described in 42 U.S.C. § 5304(a)(4) (1975 Supp.

The Housing Assistance Plan (HAP), which is to be completed by the applicant community, must contain a survey of the housing stock of the community, an assessment of its housing needs, a goal for the provision of assisted housing, and a description of the location of existing and proposed lower-income housing. The 1974 Act also made the HAP the basis for assistance under many of the federally-subsidized, low-income housing programs.[39/] As such, it is an important link between the housing and the community development sections of the Act.[40/] The significance of this cannot be overestimated. Congress left no doubt of the pivotal role it intended for the HAP by excluding it from the list of application requirements which might be waived by the Secretary.[41/]

39/ Pub. L. No. 93-383 § 213; 42 U.S.C. § 1439 (1975 Supp.). This section virtually insulates a community from unwanted federally-assisted housing projects by permitting it to object to any application for assistance it deems "inconsistent with its HAP.

40/ The newly-proposed HUD Regulations, note 11 supra, 24 C.F.R. § 570.303; 41 Fed. Reg. 2347 (January 15, 1976), acknowledge the importance of the HAP, describing it as "one of the most significant parts of the community development application process, [with] . . . a significant impact on various aspects of HUD-assisted housing program activities." Id. at 2348.

41/ 42 U.S.C. § 5304(b)(3) and (4) (1975 Supp.).

The plaintiffs charge that HUD disregarded the statute by approving these grants without requiring the communities to complete one element of the "needs" section of the HAP; that part which requires a community to estimate the housing needs of low income persons "expected to reside" within its borders.[42/] Six of the defendant towns[43/] had their grants approved despite their submission of a "zero 'expected to reside'" figure on their applications. The plaintiffs argue that this was not an accurate estimate of the housing needs

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42/ 42 U.S.C. .304(a)(4)(A) (1975 Supp.). This information is to be given in Table II C of the applicant's Housing Assistance Plan.

43/ All but East Hartford.

which existed among persons in this category.[44/] This omission, they argue, effectively emasculated the "needs" section of the applications themselves. They further argue that, if what they describe as "needs" had been included, the projects proposed by the towns would then have been inappropriate to the "needs" disclosed for the community.

44/ HUD's regulations state that this figure refers to lower income persons and families "planning or expected to reside in the community as a result of planned or existing employment facilities." 24 C.F.R. § 570.303(b)(2). The plaintiffs offer, as examples of why they question the accuracy of a "zero" figure for any of the defendant towns, the fact that 4,600 Hartford residents commute to work in East Hartford, and that 6,980 more work in West Hartford. Testimony of Jonathan Colman, September 22, 1975. These figures were from a study prepared by HARCON Associates, for the City of Hartford, based on information from the Connecticut Department of Labor. Furthermore, a study conducted in Glastonbury identified 806 persons working in the Town who resided elsewhere, but wanted to live in Glastonbury, and were eligible for federal housing assistance under the Section 8 program.

As Mr. Paul Davidoff, a lawyer and urban planner who served as a consultant to the City of Hartford in its review of the defendant towns' grant applications, testified:

> "At the end, a judgment had to be made. . . . [A] community might have made, for the first year, a tentative judgment. It might have been wrong. . . . But it isn't zero, because the zero figure is patently absurd in terms of the reality of what is happening in each of these communities. There is no basis at all, in fact, in any of the data on the growth of these communities . . . for zero to be put in."

Hearing of September 23, 1975.

If either of these are true, they contend, the Secretary would have been mandated to disapprove the applications, under § 5304(c)(1) and (2). Finally, they also contend that HUD's approval of these grants, despite the towns' failure to make a realistic projection of the influx of new low-income residents, is contrary to the "legal review" duties imposed upon the Secretary by § 5304(c)(3). This is the source of their claims under the federal civil rights acts; it is also the basis of their claim that HUD has not even complied with the 1974 Act itself.

HUD's failure to require an accurate projection of low-to-moderate income persons expected to reside in the communities was not the result of an oversight. On May 21, 1975, while six of the seven communities' applications were still in the process of HUD review, the HUD Area Office received a memorandum from David O. Meeker, Jr., Assistant Secretary for Community Planning and Development at HUD.[45/]

45/ This memorandum, sent to all area office directors and all community planning and development division directors, was added to the record as Plaintiffs' Exhibit 12, at trial, and as Exhibit B to the Affidavit of Lawrence Thompson, August 25, 1975. Mr. Thompson is Director of the Hartford Area Office of HUD. The memorandum provides, in pertinent part, that:

> "Where, in the opinion of the reviewer, it is reasonable to assume that a significant portion of the potential need has not been included in the needs table of the HAP, the

That memorandum informed the communities that they would be permitted to obtain approval of their first year grant applications, even without submitting figures in the "expected to

45/ cont'd

> applicant should be contacted indicating that prior to HUD's tender of contract the applicant must:
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> (a) Adopt the HUD figure . . . , or
> (b) Adopt its own figure . . . , or
> (c) Indicate what steps the applicant intends to take in identify [sic] a more appropriate needs figure by the time of its second year submission."

The plaintiffs do not challenge the procedural propriety and legal effect of the May 21, 1975 Meeker Memorandum. Paraphrasing the analogous decision in Fletcher v. Housing Authority of Louisville, 491 F.2d 793, 799 n.10 (6th Cir.), vacated and remanded, 419 U.S. 812 (1974), it is HUD's decision to implement the memorandum, and not its issuance, which is involved here. Offering the options presented by the Meeker Memorandum to the six defendant towns is what the plaintiffs complain about, not the compliance by HUD with rule-making procedures before it issued the memo.

The degree of control exercised over the entire community development funding process by the HUD central office, in Washington, D. C., is illustrated by an excerpt from an earlier HUD directive, also issued by Mr. Meeker. Meeker Memorandum of November 29, 1974. Exhibit A to Affidavit of Lawrence Thompson, August 25, 1975. This earlier memorandum directs that:

> "No CD programs may be approved, even conditionally, without approval of the HAP. Therefore, disapproval of the HAP amounts to disapproval of the whole CD program. Since CD plan disapproval can only be made at the Central Office, Area Offices finding a HAP unacceptable must follow the disapproval procedure described below. . . . The power to disapprove applications for entitlement funds is not delegated below my office."

reside" category. Two other approaches, involving estimates of this need, were suggested in this memorandum, but the option of whether to adopt them, or not to submit any figure, was given to each applicant community.[46/] Mr. Thompson testified that the Meeker Memorandum was issued in response to "the difficulty all communities across the country were having on this 'expected to reside' element." The local HUD office approved these six grants pursuant to that directive. Thus, neither the towns nor the Area Office are entirely at fault.

The plaintiffs challenge this HUD directive, characterizing it as a de facto waiver of the "expected to reside" element of the Housing Assistance Plan, contrary to the non-waiver provision of the 1974 Act. The government argues that this was simply a deferral of that element, and well within HUD's authority in administering the Act.

Of course, deference is due to the construction of a statute by the administrative department responsible for its

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46/ In letters sent out from the Community Planning and Development Division of the Area Office on June 2, 1975, to each of these six applicant communities. Because the local HUD Area Office was unable to develop its own "expected to reside" figures, only the second and third options of the Meeker Memorandum were presented to these towns.

implementation. Udall v. Tallman, 380 U.S. 1 (1965). But this "sound principle . . . normally applies only where the relevant statutory language is unclear or susceptible of differing interpretations." Shea v. Vialpando, 416 U.S. 251, 262 n.11 (1974). Thus, if the statute gives specific directi Koshland v. Helvering, 298 U.S. 441, 447 (1936), or the administrative interpretation is not consistent with either the statute, Morton v. Ruiz, 415 U.S. 199, 232 (1974), or Congressional intent, Espinoza v. Farah Manufacturing Co., 414 U.S. 86, 94 (1973), the administrative agency cannot amend it by regulation. Koshland v. Helvering, 298 U.S. 441 447 (1936). This salutory rule is to be applied by the cour to prevent "the unauthorized assumption by an agency of majo policy decisions properly made by Congress." American Shio Building v. Labor Board, 380 U.S. 300, 318 (1965). Although "[t]he court is not empowered to substitute its judgment for that of the agency" on matters of fact, Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 416 (1971),

> "the courts are the final authorities on issues of statutory construction, and 'are not obliged to stand aside and rubber-stamp their affirmance of administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the Congressional policy underlying a statute.'"

Volkswagenwerk v. FMC, 390 U.S. 261, 272 (1968) (citations omitted). As the Supreme Court stated in Manhattan Co. v. Commissioner, 297 U.S. 129, 134 (1936):

> "The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law--for no such power can be delegated by Congress--but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity."

Undaunted by these principles of law, HUD contends that the Meeker Memorandum was not in conflict with the statute, but merely supplementary to it. However, the statute could not be more clear. The Secretary was permitte to waive all or part of paragraphs (1), (2), and (3) of 42 U.S.C. § 5304(a), under certain conditions. And the Secretar was also permitted to accept the applicant community's certification that it had complied with paragraphs (5) and (6). Only paragraph (4), that describing and requiring the HAP, is not mentioned. The canon of construction inclusio unius est exclusio alterius compels the conclusion that the Secretary was not empowered to waive the requirement that th application include a Housing Assistance Plan for the com-

munity. Such a creation of additional exceptions to statutor requirements, by administrative action, is not favored. Carey v. Local Board No. 2, Hartford, Connecticut, 297 F. Supp. 252, 260 (D. Conn.), aff'd, 412 F.2d 71 (2d Cir. 1969).[47/]

The defendants correctly observe that HUD has not waived the entire HAP, but merely one of the elements that go into the community's assessment of its needs for lower-income housing.[48/] The failure to submit a figure for the "expected to reside" category does not detract, for example, from each town's calculation of the housing needs of its present inhabitants who fall within the lower-income classi-

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47/ See also, Marsano v. Laird, 412 F.2d 65 (2d Cir. 1969).

48/ As Mr. Lawrence Thompson testified at the hearing: "The Housing Assistance Plan requirement is a statutory provision and it's way beyond my power to waive it. Only the Congress could." Hearing of September 24, 1975.

fication.[49] However, the "expected to reside" figure is the keystone to the spatial deconcentration objective of the 1974 Act.[50] The recent report issued by the United States

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49/ HUD Regulations equate the terms "lower" and "low and moderate" income families, and define this group as those

> "families whose annual incomes do not exceed 80 percent of the median family income of the area as determined by the Secretary with adjustments for smaller and larger families . . . ."

24 C.F.R. 570.3(o). The maximum annual income for these groups, during 1975 in the Hartford area, was $7,500 for low and $12,000 for moderate income families, depending on family size. Plaintiffs' Exhibit 10, Affidavit of William Slitt, September 16, 1975, ¶ 5.

The 1972 median incomes for the seven defendant towns, as set forth in the Affidavit of Jonathan Colman, July 29, 1975, Exhibit A to Plaintiffs' Memorandum in Support of Motion for A Preliminary Injunction, are as follows:

East Hartford:	$12,000
Enfield:	$12,789
Farmington:	$13,712
Glastonbury:	$15,000*
Vernon:	$12,338
West Hartford:	$14,796*
Windsor Locks:	$13,372

At the hearing of September 22, 1975, Mr. Colman testified as to the substantially lower 1970 Census median income figures for these towns. He further testified that even the 1972 figures quoted above had risen considerably by 1975.

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* The base year for these two figures is not clear from the Affidavit.

50/ Testimony of Paul Davidoff, September 23, 1975. Mr. Thompson of HUD also agreed that the "expected to reside"

Commission on Civil Rights[51/] emphasizes that the Housing and Community Development Act of 1974 envisions a new direction in federal assistance programs because it:

> "for the first time ties the provision of community development funds to the provision of lower-income housing by requiring each locality to submit a housing assistance plan as part of its community development block grant application. To receive community development funding, a locality must address its need for lower-income housing." (Emphasis added). 52/

The success of this new "carrot and stick" approach to the dispersal of low and moderate income groups depends upon the willingness of the suburban towns to provide federally-

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50/ cont'd

figure is "an important requirement," and is "the only specific element of the Act that I can identify that operationally connects [the spatial deconcentration of lower-income persons with what we do and the applicants do." Hearing of September 24, 1975.

51/ Twenty Years After Brown: Equal Opportunity In Housing, United States Commission on Civil Rights (December, 1975).

52/ Id. at 32.

assisted housing within their boundaries. Of course, communities can choose not to participate in the program.[53/] However, the Meeker Memorandum permits suburban towns to obtain funding under the Act without the quid pro quo Congress decided to require--their taking steps to expand housing opportunities for low and moderate income persons. Indeed, this requirement is one of the most important differences between the Housing and Community Development Act of 1974 and the categorical grant community development programs it replaced.[54/] Thus, the Meeker Memorandum removes the incentive Congress provided for these communities to accept such

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53/ As have both Berwyn and Cicero, Illinois. Id. at 61 n.19 Indeed, the Town of Vernon applied for only $25,000 to build a residential park, although its first-year entitlement grant under the statutory "hold harmless" formula, was over $100,000. 42 U.S.C. § 5306. Testimony of Jonathan Colman, September 23, 1975. The Town has since obtained a discretionary grant under the Act in the amount of $150,000. Lett of January 7, 1976, to the court, from Martin B. Burke, Town Attorney.

54/ Twenty Years After Brown: Equal Opportunity In Housing, United States Commission on Civil Rights (December, 1975) at 60.

federally-assisted housing, thereby effectively gutting the "enforcement" provisions of the Act.[55/]

I conclude that HUD acted contrary to law when it approved these six grants, without requiring the towns to make any assessment whatsoever of the housing needs of low and moderate income persons who might be "expected to reside" within their borders. When HUD offered the towns the third option presented by the May 21, 1975 Meeker Memorandum, to submit no figure at all, and they all selected that option, they acted contrary to the clear implication of the statute, that the HAP could not be waived by the Secretary.[56/] The preliminary injunction previously entered in this case will be made permanent with respect to the Towns of Enfield,

55/ The newly-proposed HUD Regulations, see note 11 supra, suggest that HUD is contemplating a partial waiver for yet another year, in certain circumstances. 24 C.F.R. § 570.303(2)(vi); 41 Fed. Reg. 2347, 2349 (January 15, 1975). As stated in note 11 supra, the validity of this proposed regulation is not, however, before me in this case.

56/ This decision avoids any need to assess the propriety of HUD's conclusion that the needs, as described in these six towns' applications, were not "plainly inconsistent" with "significant facts and data, generally available and pertaining to community and housing needs and objectives," and that the proposed projects were not "plainly inappropriate to meeting the needs and objectives identified by the applicant, as required by 42 U.S.C. § 5304(c)(1) and (2) (1975 Supp.). Those issues are, however, addressed with respect to the East Hartford application, in Part V infra of this opinion.

Farmington, Glastonbury, Vernon, West Hartford, and Windsor Locks.

V.

The grant to the Town of East Hartford presents a somewhat different problem. Unlike the other defendant towns East Hartford actually submitted a figure for the "expected to reside" portion of its HAP. The original HAP disclosed a total need for 135 assisted units in this category, including 81 elderly or handicapped, 16 large families, and 38 others. These figures were subsequently reduced, to 131, 78, 15, and 38, respectively, in a revision of the HAP undertaken at HUD's request.

The plaintiffs contend that these figures understated the actual number of lower income persons who should have been "expected to reside" in East Hartford, based on the facts and data available at that time. They argue from this that the Secretary acted contrary to law because she was obligated to disapprove the East Hartford grant application, since the "expected to reside" figures were "plainly inconsistent" with the facts and data. 42 U.S.C. § 5304(c)(1) (1975 Supp.).

The issues presented for decision are whether the Secretary's approval of this grant was: (1) within the scope of her authority; and (2) neither arbitrary nor capricious. Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 414-16 (1971). The answers to these questions

> "require the reviewing court to engage in a substantial inquiry . . . . Although this inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one. The court is not empowered to substitute its judgment for that of the agency." 57/

Here the answer to the first question is simple. Congress dictated that the grants be approved, unless the Secretary made certain determinations. HUD established revi procedures which delegated the power to approve applications to the Area Directors, but retained the power to disapprove in Washington.58/ The administrative record discloses that these determinations were not made with respect to the East

57/ 401 U.S. at 415-16. The cautionary instruction concernin the narrow scope of review is particularly appropriate in this case, since the Secretary herself has been given only a very limited range of discretion. 42 U.S.C. § 5304(c) (1975 Supp.). Congress clearly built a presumption of approval into the Act with this restrictive review standard and the automatic approval provision. 42 U.S.C. § 5304(f) (1975 Supp.).

58/ Meeker Memorandum of November 29, 1974. Exhibit A to the Affidavit of Lawrence Thompson, August 25, 1975.

Hartford application. On the contrary, the Hartford Area Office did "not consider the information submitted by the City of Hartford as 'facts and data,'"[59/] and so concluded that conditional approval was warranted.[60/] The decision to approve the grant was certainly within the "range of choices that the Secretary can make." Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 416 (1971).

The second inquiry, however, presents more difficulty. The statute[61/] requires me to determine, in essence, "whethe

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59/ Memorandum to the East Hartford Entitlement File, May 19, 1975. Attachment J to the Administrative Record for East Hartford.

60/ Memorandum to Lawrence Thompson, April 24, 1975. Attachment O to the Administrative Record for East Hartford. The grant approval letter, dated May 2, 1975, is Attachment L to the Administrative Record.

61/ 5 U.S.C. § 706 provides:

> "The reviewing court shall--
>
> * * *
>
> (2) hold unlawful and set aside agency action, findings, and conclusions found to be--
>
> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

the decision [to approve the grant] was based on a consideration of the relevant factors and whether there has been a clear error of judgment." 401 U.S. at 416. I conclude that the Secretary has abused her discretion in both respects. HUD's approval, without taking the steps required to obtain the "generally available" information it needed to evaluate these applications, and without considering such information, amounts to arbitrary and capricious decision-making. Furthermore, the decision to approve the East Hartford application, in the face of this "generally available" information, constituted a clear error of judgment, and was not in accordance with law. In other words, HUD was doubly at fault--it did not obtain the generally available information required for a proper review, and it acted upon the basis of inadequate information.

HUD does not claim that it was able to critically appraise the "expected to reside" figures in the East Hartford application. Mr. Lawrence Thompson, the Hartford Area Director, admitted that:

> "In reviewing the HAPs, it was apparent that there was an absence of reliable data upon which to evaluate the surveys of housing needs of lower-income groups expected to

reside in the community as a result of planned or existing employment facilities." 62/

As a result, HUD was unable to calculate its own estimate of "expected to reside" figures, or even "to make a determination as to the accuracy of the figures supplied by the defendant towns." 63/

Mr. Thompson suggested that more data was not gathered because, in the time that would have taken, the 75-day review period would have been exceeded, and the grants would have been automatically approved. 64/ He acknowledged that all

62/ Affidavit of Lawrence Thompson, August 25, 1975, ¶ 12.

63/ Affidavit of William Flood, September 12, 1975, ¶ 5. Exhibit B to the Defendants' Memorandum in Support of Motion to Dismiss or in the Alternative for Summary Judgment. Mr. Lawrence Thompson testified to the same effect at trial, stating that HUD lacked the data necessary "to compute a substitute figure to the figure that was supplied by the applicant." Hearing of September 23, 1975.

64/ Pursuant to 42 U.S.C. § 5304(f) (1975 Supp.). Affidavit of Lawrence Thompson, August 25, 1975, ¶ 13. The East Hartford application was received by HUD on March 24, 1975. Supplemental Affidavit of Lawrence Thompson, September 12, 1975, ¶ 19. Exhibit A to the Defendants' Memorandum in Support of Motion to Dismiss or in the Alternative for Summary Judgment. The application was approved in a letter from Mr. Thompson, dated May 2, 1975. Attachment L to the Administrative Record for East Hartford. Thus, approximately five weeks still remained on the "75-day clock" at the time the East Hartford application was approved.

the local communities were having great difficulty in developing "expected to reside" figures, and that this caused him to suspend processing of all pending applications during May 1975, to await expected instructions from HUD in Washington, D. C.[65/] These instructions came in the Meeker Memorandum of May 21, 1975, discussed in Part IV of this opinion. That memorandum set forth a methodology, developed by the central office, for computing an "expected to reside" figure for a community, based on the U. S. Census Bureau's "Journey to Work" tables.[66/] It was the apparent unavailability of these figures on a municipality-by-municipality basis for for the Hartford SMSA that led the Area Office to conclude that it was unable to prepare its own "expected to reside" figures, or to review those proposed by East Hartford.[67/] However, a similar breakdown, lacking only income figures for

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65/ Supplemental Affidavit of Lawrence Thompson, September 12, 1975, ¶ 7. This problem was not limited to the Greater Hartford Area. Affidavit of Allan Thornton, November 6, 1975 ¶ 4.

66/ Meeker Memorandum of May 21, 1975. Plaintiffs' Exhibit 12 and Exhibit B to the Affidavit of Lawrence Thompson, August 25, 1975.

67/ Affidavit of William Flood, September 12, 1975, ¶ 4.

the commuters, proved to be available from the Connecticut Department of Transportation, on only two days' notice![68/]

Mr. Thompson also stated that East Hartford was not given the opportunity to submit a "zero" as its "expected to reside" projection, as were the other six defendant towns,[69/] only because its application was approved before processing was suspended.[70/] Thus, it was simply happenstance that a figure for "expected to reside" was included in the East Hartford HAP at all. The record demonstrates that, so far as HUD was concerned, that number might have had no validity whatsoever--it was untested and untestable. HUD's approval of the grant to East Hartford in such circumstances cannot

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68/ Affidavit of Paul Davidoff, October 21, 1975, ¶ 9, and Affidavit of Jonathan Colman, October 22, 1975, ¶ 3.

69/ In letters sent out by the HUD Area Office on June 2, 1975 Affidavit of William Flood, September 12, 1975, ¶ 8.

70/ Supplemental Affidavit of Lawrence Thompson, September 12, 1975, ¶ 22. Indeed, East Hartford received a similar letter on June 5, 1975. Affidavit of William Flood, September 12, 1975, ¶ 9. Attachment M to the Administrative Record of East Hartford. This letter emphasized the importance of the "expected to reside" element of the HAP, informed the Town of the options the Hartford Area Office had extended to the other communities, and stated that East Hartford, while not required to alter its HAP at that time, would be required to address this need at the time of its next submission, in accordance with HUD regulations.

be considered a proper exercise of discretion. Rather, it was an abandonment of its duty to review and evaluate the housing needs projection for those persons "expected to reside" within East Hartford. I conclude that HUD's approval of East Hartford's grant application was contrary to law.

There is no doubt that HUD did not conduct a rigorous review of the East Hartford "expected to reside" projection. It justified this failure by pointing to an alleged absence of data. In fact, however, a wide variety of alternative data sources was available. For example, HUD's own instructions suggest the use of census materials; code enforcement records; local agency records; 701 plans; or studies done by reputable research, community service, or planning organizations, such as private consulting firms.[71/] The proposed HUD Regulations also list several data sources, such as approved development plans; building permits; and major contract awards.[72/] One of the plaintiffs' expert witnesses, Mr. Paul Davidoff, also listed a number of other possibilities

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71/ Instructions For Form HUD-7015.8 thru 11. Plaintiffs' Exhibit 2 at trial.

72/ 24 C.F.R. § 570.303(c)(2)(i)(A); 41 Fed. Reg. 2347, 2349 (January 15, 1976).

including studies conducted by or for state agencies; plant or shopping center surveys; zip code information from the payroll records of local companies; or data gathered by the local chamber of commerce.[73] And Mr. Jonathan Colman, Director of Planning for the City of Hartford, testified that figures detailing commercial development, in the form of floor space completed or under construction, are compiled by the Connecticut Department of Commerce.[74] The HUD Regulations[75] and instruction sheet[76] do not require that the data used to review grant applications be published. The standard is simply that it be "accessible . . . or . . . available to both the applicant and the Secretary . . . ."[77] The materials and data sources described above fall within

[73] Testimony at the Hearing of September 23, 1975.

[74] Testimony at the Hearing of September 22, 1975. These figures can be used to estimate new employment opportunities generated by that construction. HUD's awareness of the relationship between new commercial construction and new employment opportunities is demonstrated by Plaintiffs' Exhibit 14, a letter to Stephen Fils, Town Manager of Farmington, from Lawrence Thompson, March 9, 1972.

[75] 24 C.F.R. § 570.306(b)(2).

[76] Plaintiffs' Exhibit 2, note 71 *supra*.

[77] 24 C.F.R. § 570.306(b)(2).

this broad category, and HUD's failure to gather and consult them prior to its evaluation of East Hartford's grant[78/] was an abdication of its responsibilities under the Housing and Community Development Act of 1974.[79/]

The foregoing discussion is not intended to suggest that East Hartford invented its 135, then 131, figures, or that HUD's review of the East Hartford application was entirely passive. East Hartford developed its "expected to reside" projection from the waiting list for the East Hartford Housing Authority,[80/] and the HUD Area Economist, William Flood, commented upon the unsatisfactory nature of that methodology.[81/] The Hartford Area Office itself

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78/ It is clear from the record that HUD's review was not based on this sort of data. "I chose to approve these seven applications after determining they were not plainly inconsistent with the facts and data avaiiable [sic] at that time. Affidavit of Lawrence Thompson, August 25, 1975, ¶ 14. Also, see Affidavit of William Flood, September 12, 1975, ¶ 5.

79/ 42 U.S.C. § 5304(c)(1) (1975 Supp.).

80/ Attachments D and K to the Administrative Record for East Hartford. The Town used the 40 per cent of the applicant pool who were not residents of East Hartford as its "expected to reside" estimate.

81/ Memorandum to Harry Reese, April 18, 1975. Attachment O to the Administrative Record for East Hartford.

> "agreed [with the City of Hartford] that a more comprehensive approach should be reflected in future HAPs. [But] HAO considered that using the waiting list and 1970 census data provided a satisfactory initial estimate of housing need in the absence of significant regional data . . . ." (Emphasis added). 82/

Even if it could be said that HUD adopted that waiting list as the data source for computing an "expected to reside" figure, and used it to review the East Hartford application, the approval of the grant on that basis constituted an abuse of discretion. The waiting list, alone, was clearly insufficient as a data base. Mr. Flood acknowledged this when he indicated that the first HAP submitted by East Hartford, using only the Housing Authority waiting list, was "clearly inconsistent with generally available data." 83/ The revised HAP, which he found "marginally adequate" and "quite marginal," was based on the 1970 U. S. Census figures for low income persons in East Hartford, as supplemented by the Housing

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82/ Memorandum to the East Hartford Entitlement File, May 15, 1975. Attachment J to the Administrative Record for East Hartford.

83/ Memorandum to Harry Reese, April 14, 1975. Attachment O to the Administrative Record for East Hartford.

Authority waiting list information. That HAP raised the "currently existing need" figure from 331 to 473, increased the first and third year goals by 60 units,[84] and shifted the emphasis toward a closer balance between elderly and non-elderly housing.[85] However, no change was made in the data base from which the "expected to reside" element of the HAP was calculated, and that figure was actually reduced in the revised HAP![86]

The objections Mr. Flood made to the use of the waitin list alone to estimate currently existing need apply with equal, if not greater, force to its use as the sole source for the "expected to reside" figures. For example, he pointed out that Section 8 subsidies are available to many families with incomes higher than the limits set for public housing, and that there are only a small number of units for large families in the existing inventory of the East Hartford

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84/ The increase consisted entirely of an allocation of $120,000 of Section 8 funds. All 60 units were to be in already existing housing.

85/ Attachments D and K to the Administrative Record for East Hartford.

86/ Id.

Housing Authority. He also objected to the stale nature of the waiting list data, and the poor reputation of the housing authority.[87/] The comments from Education/Instruccion, a local civil rights research organization dealing with discrimination in housing and employment, parallel those made by Mr. Flood. They also point out that the availability of housing through the East Hartford Housing Authority was not publicized outside of East Hartford itself.[88/] The Town itself acknowledged the validity of the criticism concerning the shortage of large-family units when it allocated a disproportionate share of its Section 8 funds to meet the needs of large families.[89/]

The waiting list for the East Hartford Housing Authority may well be one factor upon which to base the "expected to reside" projection, but it cannot properly be the only one. The passivity with which HUD reviewed this

87/ Memorandum to Harry Reese, April 14, 1975. Attachment O to the Administrative Record for East Hartford.

88/ Letter to Ms. Connell, Chairwoman of the Ad Hoc Committee on the Housing and Community Development Act, CRCOG. Attachment H to the Administrative Record for East Hartford.

89/ Attachment K to the Administrative Record for East Hartford

element of the East Hartford HAP is well illustrated by the statement, made in comparing the criticisms of the application to East Hartford's response, that:

> "The inclusion of these figures [131] in the HAP appears to respond to the explicit comment of 'no reflection of needs' [of those presently working in East Hartford] made by Hartford. CROG's comment on this matter is also answered by the computation listed above." 90/

HUD had a duty to do more than accept any "expected to reside" figure proposed by East Hartford, however inadequate its size or derivation.[91] The administrative record discloses that it did not live up to that duty.

90/ Memorandum to the East Hartford Entitlement File, May 15, 1975. Attachment J to the Administrative Record for East Hartford.

91/ HUD's Acting Regional Administrator, Harold Thompson, emphasized this duty in a memorandum to the Area Director, Lawrence Thompson:

> "In sum, these allegations [by the City of Hartford] are, in our opinion, well-documented and of a very serious nature. Therefore, whatever your decision may be regarding this matter, please ensure that the administrative file reflects a reasonable decision-making process."

Plaintiffs' Exhibit 13, Memorandum to Lawrence Thompson, April 29, 1975.

VI.

For the reasons outlined in the foregoing opinion, I have concluded that the Secretary abused her discretion in approving the community development entitlement grants to the seven defendant communities. The preliminary injunction previously entered in this case is hereby made permanent. The seven defendant Towns are enjoined from drawing upon the Treasury, or spending in any fashion, the entitlement funds granted to them pursuant to Title I of the Housing and Community Development Act of 1974, which are the subject of this lawsuit. The Towns may seek to obtain a new approval of these grant applications from HUD. This injunction may be lifted upon the filing with the court of such a new approval.

It is

SO ORDERED.

Dated at Hartford, Connecticut, this 28th day of January, 1976.

M. Joseph Blumenfeld
United States District Judge

JUDGMENT

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CITY OF HARTFORD, on behalf of itself and its inhabitants, Richard Brown, Nicholas R. Carbone, John Cunnane, William A. DiBella, Allyn A. Martin, Richard Suisman, Margaret V. Tedone and Olga W. Thompson in their official capacity, Miriam Jordan and Fannie Mauldin	:	
vs.	:	CIVIL ACTION NO. H-75-258
CARLA A. HILLS, in her capacity as Secretary of the Department of Housing and Urban Development; HAROLD C. THOMPSON, in his capacity as Acting Regional Administrator of the Department of Housing & Urban Development; LAWRENCE THOMPSON, in his capacity as District Director of the Department of Housing and Urban Development; and THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT and the Towns of WEST HARTFORD, GLASTONBURY, FARMINGTON, WINDSOR LOCKS, VERNON, ENFIELD AND EAST HARTFORD	:	

JUDGMENT

The above-entitled action came on for consideration by the Court by the Honorable M. Joseph Blumenfeld, United States District Judge;

And the Court after a full hearing on the merits of the case

and after careful consideration of all of the papers submitted by the parties filed its Memorandum of Decision dismissing the action with respect to the individual Plaintiffs, Richard Brown, Nicholas R. Carbone, John Cunnane, William A. DiBella, Allyn A. Martin, Richard Suisman, Margaret V. Tedone, and Olga W. Thompson in their official capacity as members of the Court of Common Council of the City of Hartford as having no cognizable legal interest in the outcome of this suit; and, further finding that the Defendant Carla A. Hills, Secretary of the Department of Housing and Urban Development abused her discretion in approving the community development entitlement grants to the seven Defendant Towns; and, further entering a permanent injunction enjoining the aforesaid seven Defendant Towns from drawing upon the Treasury, or spending in any fashion the entitlement funds, the subject matter of this lawsuit, granted to them pursuant to Title I of the Housing and Community Development Act of 1974, until further order of this Court;

It is accordingly ORDERED and ADJUDGED that the Complaint of the individual Plaintiff members of the Court of Common Council of the City of Hartford be and hereby is dismissed; and,

It is further accordingly ORDERED and ADJUDGED that the seven Defendant Towns of West Hartford, Glastonbury, Farmington,

Windsor Locks, Vernon, Enfield and East Hartford are permanently enjoined, until further order of this Court, from drawing upon the Treasury or spending in any fashion the entitlement funds which are the subject matter of this lawsuit and granted to them pursuant to Title I of the Housing and Community Development Act of 1974.

Dated at Hartford, Connecticut, this 9th day of February, 1976.

SYLVESTER A. MARKOWSKI
Clerk, United States District Court

Approved:

M. Joseph Blumenfeld
M. JOSEPH BLUMENFELD
United States District
Judge

By: _____
Deputy-in-Charge

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FIRST AFFIDAVIT OF LAWRENCE L. THOMPSON DATED AUGUST 25, 1975

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

CITY OF HARTFORD, et al,
Plaintiff

v.

CARLA A. HILLS, et al,
Defendants

Civil Action No. H-75-258

AFFIRDAVIT OF MR. LAWRENCE L. THOMPSON

Lawrence L. Thompson, first being duly sworn, desposes and says:

1. I am the Area Director of the Hartford Area Office of the Department of Housing and Urban Development. I have occupied that position since September 1970.

2. The Area Office is charged with the responsibilities of reviewing and ruling upon applications filed pursuant to the Community Development Block Grant Program (CDBG) created by Title I of the Housing and Community Development Act of 1974 (HCDA), 42 U.S.C. 5301, et seq. As Director of the Area Office I receive the recommendations of reviewing officials concerning the adequacy of CDBG applications, resolve major differing recommendations of reviewers, make the final determiniations required by Section 104 of the HCDA, 42 U.S.C. 5304, and notify the community of HUD's determination with respect to its application. See memorandum dated November 29, 1974, from David O. Meeker, Jr. to all Regional Administrators and Area Directors attached hereto and incorporated herein as Exhibit A.

First Affidavit of Lawrence L. Thompson
Dated August 25, 1975

3. Section 104 of the HCDA requires that an applicant for CDBG assistance submit inter alia a community development plan and program, a housing assistance plan (HAP) and certifications and accurances of compliance with citizen participation, environmental, civil rights, and other program and statutory requirement. Applications are deemed approved unless HUD notifies the applicant within 75 days of receipt of the application, of the specific reasons for disapproval. Under the terms of this Section the application must be approved unless:

(1) The community and housing needs and objectives outlined in the HAP and community development plan are plainly inconsistent with significant, generally available facts and data; or

(2) The activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by applicant; or

(3) The application does not comply with the requirements of applicable law.

In the event I find the HAP or any other key element of the application to be unacceptable I must communicate my recommendation for disapproval of the CDBG application through the Regional Office to the Central Office for a final determination. See Exhibit A.

4. The Housing and Community Development Act of 1974 was enacted August 22, 1974. Applications had to be filed by April 15, 1975, in order to permit HUD to have the 75 day period to review prior to the expiration of the fiscal year.

Forty five days prior to that date the application had to be submitted for review and comment to the areawide agency designated pursuant to OMB's A-95 procedures so that the A-95 review comments could be submitted with the application, as required by law. The applications from each of the seven communities named in this litigation were received during March and April 1975.

5. The scope of review varies for different elements of an application. Those items for which the statute authorizes the Secretary to accept certifications were reviewed to determine that the certifications had been properly executed and that they were not contradicted by substantial evidence. See 24 C.F.R. Sec. 570.306. The certifications stating that the community development program has been developed so as to give maximun feasible priority to activities which will benefit low and moderate income families[1/] or aid in the prevention or elimination of slums or blight (Sec. 104(b)(2) of HCDA); and that the program will be administered in accordance with Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968 (See Sec. 104(a)(5) and (6)(4)), were examined from this limited standpoint.

6. Additional review is undertaken with regard to those items upon which the HCDA requires that the Secretary is to make a specific determination while applying the limited standards of review described in paragraph 3, supra. Included among those items are the community development plan and program; the certification that an activity, which does not necessarily serve the needs of

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1/ Construction or continued subsidization of housing is not an eligible use of CDBG funds.

low-and-moderate income families, meets other community development needs having a particular urgency (See Sec. 104(b)(2)); and the HAP.

7. Given the absence of provisions requiring in depth, front-end review of applications, and the limited bases upon which applications can be disapproved, HUD will place heavy reliance upon post-reviews and audits to determine whether the applicant has carried out its program as described in its application and in accordance with the requirements of the HCDA and other laws. See Section 104(d) of the HCDA and 24 C.F.R. Sec. 570.900 et seq. Based upon the findings of these post-reviews and audits, HUD will require the recipients of grants to take any corrective measures that may be indicated, including repayment of any or all funds expended for purposes not authorized by the regulations or the terms of the approved application.

8. The determinations which preceeded the approval of the CDBG applications of the towns of West Hartford, East Hartford, Glastonbury, Enfield, Windsor Locks, Vernon, and Farmington were made in accordance with HUD requirements and procedures, considered all relevant comments and data, and were consistent with the goals and purposes of the HCDA and other applicable laws.

9. Upon receipt of the CDBG applications and the comments of the City of Hartford, and the Capitol Region Council of Governments Planning Division (CRCOG), the Area Office conducted a point by point review of each element of the application and each comment made upon that element. In the cases of several of the communities complained of, certain aspects of the original HAP were found to be deficient. Consistent with 24 C.F.R. Sec. 507.306(d), we promptly

notified the community of the deficiencies and provided them an opportunity to correct them. Consequently the communities modified their assessments of housing needs or housing goals to make them consistent with the significant facts and data generally available to HUD and other parties.

10. With respect to the Housing Assistance Plans finally approved for all seven suburban towns, the HAPs make maximum use of Federal funds which are available to support subsidized housing for lower income families. The principal source of housing funds is the Section 8 Housing Assistance Payments Program administered by HUD, 42 U.S.C. 1437(f) since CDBG funds under 24 C.F.R. 570.201(e) may not be used for construction or continued subsidization of housing. Of approximately $1.8 million in annual Section 8 subsidies available to all suburban towns in the Hartford SMSA, the approved HAPs for only these seven for the first year require $1.7 million. Therefore, even if the seven communities were to revise their HAP's upward, HUD could not make additional Section 8 funding available.

11. In terms of units, the HAPs of the seven towns represent 480 Section 8 units. The majority (69%) of the units are for families. Thirty-one percent are for elderly. In addition, the HAP's of the seven communities present a goal of 396 units of assisted housing under various programs other than Section 8. Together with the Section 8 goals cited above, this results in a total assisted housing program of 876 units for these communities (see Table 1 attached). I regarded this as an adequate and realistic first year goal.

12. In reviewing the HAPs, it was apparent that there was an absence of reliable data upon which to evaluate the surveys of housing needs of lower-

income persons expected to reside in the community as a result of planned or existing employment facilities. Census data is approximately 6 years old and is not sufficiently refined to provide full information on this point as a basis of evaluation. Other sources of data were similarly inconclusive. The data and comments submitted by CRCOG and the City of Hartford were essentially general and conclusory, unsupported by citation to a source or a description of the methodology employed. Often they appeared to be based upon speculation.

13. My duty under the HCDA and applicable regulations was to approve these applications unless the survey of needs was clearly inconsistent with available data. If I had insisted upon the production of more data prior to making my determinations, the 75-day time period would have been exceeded and approval of the applications would have become automatic, potentially without <u>any</u> conditions.

14. Acting in keeping with Departmental guidelines (See Exhibit B), I chose to approve these seven applications after determining they were not plainly inconsistent with the facts and data available at that time. Prior to any approval each community was required to indicate that it would develop accurate data which would in the future provide a sound basis for determining the needs of lower income families expected to reside in these communities. These data will form the basis of revised housing needs and goals to be submitted with the HAPs for next year's CDBG applications.

15. The application from the City of Hartford, itself, presented the same difficulties and was handled in exactly the same manner. Hartford's application specified that zero persons were expected to reside in Hartford as a result of

existing or planned employment facilities (See Exhibit C). Also, in a letter to the Area Office dated June 6, 1975 the City Manager stated that the necessary data to provide this information would be gathered for submission with the second year CDBG application (See Exhibit D).

16. Comments by the City of Hartford and in some instances by CRCOG contained references to a failure of a particular community to consider "regional housing needs". That poses an important policy issue, but the HCDA does not contain any authority for me to reject an application on the basis of a community failing to consider "regional housing needs".

17. Comments by Hartford and CRCOG also contained broad, unsupported allegations that the seven communities because of their racial composition had obviously discriminated against minorities. It was suggested that civil rights certifications should not be accepted from predominantly white communities located in a metropolitan area containing approximately 10.4% minority individuals. Without reference to specific actions by an applicant which had a proven discriminatory effect or were clearly discriminatory by design I could not act upon these assertions based solely upon the demographic data cited.

18. Where specific evidence of failure to meet Civil Rights requirements has been presented, the Area Office has acted. For example, on April 11, 1975, Education/Instruccion, Inc. filed an equal opportunity administrative complaint with Mr. Joseph Vera, the HUD Assistant Regional Administrator for Equal Opportunity in the Boston Regional, alleging that the Glastonbury Redevelopment Agency had failed to fulfill its obligation under HUD's equal opportunity affirmative action plan guidelines. A true copy of the complaint is attached

hereto and incorporated herein as Exhibit E. Members of my staff were instructed to investigate the allegations contained in this complaint, and to develop recommendations so that a report could be made to Mr. Vera. Our report was transmitted to the Regional Office on June 19, 1975. Although we made no finding of actual discrimination with respect to the Redevelopment Agency, the Agency was found to be deficient in following HUD affirmative action requirements and its own affirmative action plan.

19. Glastonbury's CDBG application called for more than half of the funds requested to be utilized by an agency which we concluded had taken insufficient affirmative action to promote equal employment opportunities. This finding raised questions concerning the adequacy of the equal opportunity certifications submitted by the Town of Glastonbury. Since we made no finding of discrimination, but only of inadequate affirmative action, it was concluded that Glastonbury's CDBG application could not be denied on that basis alone. However, in our letter approving the town's CDBG application, I imposed the condition that prior to tendering the Grant Agreement additional assurances pertaining to affirmative action must be received. Negotiations are continuing with town officials, and to date no Grant Agreement has been tendered. A true copy of the letter dated June 27, 1975, is attached hereto and incorporated herein as Exhibit F. My office will react in similar fashion to any other meritorious complaint containing specific, documented charges filed with the Department.

20. Procedures applicable to the use of letters of credit issued subsequent to HUD approval of the CDBG application permit recipient communities to draw against an account at the Department of Treasury at a rate determined by the

recipient without consulting with HUD, assuming all conditions upon approval of the grant have been satisified. See HUD Handbook 1900.23 attached hereto and incorporated herein as Exhibit G. An informal survey of the CDBG activities of each of the recipients indicates the following grant drawdowns:

Town	Amount Drawn	Anticipated Date of New Draw
West Hartford	0	15 days after NEPA certification filed with HUD.
Farmington	0	Before September 1
Glastonbury	0	Upon satisfaction of conditions imposed regarding civil rights assurances.
Windsor Locks	$10,000	Before September 1
Vernon	0	15 days after NEPA certification filed with HUD.
Enfield	$ 9,080	15 days after NEPA certification filed with HUD.
East Hartford	0	Early September

21. The department has taken affirmative action to expand the housing opportunities of lower income and minority families throughout the Hartford SMSA. HUD's project selection criteria, 24 C.F.R. Sec. 200.700, et seq., gives preference to subsidized projects proposed for sites outside areas of minority racial concentration. HUD also has Affirmative Fair Housing Marketing Regulations applicable to all FHA subsidized and unsubsidized projects or subdivisions approved since early 1972. See 24 C.F.R. Sec. 200.600 et seq. Sellers and landlords must have programs designed to achieve mixed occupancy. These provisions have been adapted to Section 8 of the United States Housing Act of 1937, as amended, 42 U.S.C. 1437f. The results of these procedures have been

encouraging. A significant percentage of the subsidized units located in the Hartford SMSA are located outside the City of Hartford. These units are not mostly elderly units reserved for white residents of the suburbs. The following list of Sec. 236 low and moderate income family-type projects in suburban Hartford towns illustrates the point:

Project Name	Location	No. of Units	% of Minority Occupants
East Hartford Estates	East Hartford	396	25%
Squire Village	Manchester	374	11%
Piper Brook	West Hartford	96	18%
Southfield	Newington	113	16%
East Wintonbury Hills	Bloomfield	111	20%

22. The Hartford Area Office has had notable success in obtaining a Voluntary Compliance Plan for Fair Housing with lenders in the Hartford Metropolitan area. Thirty-six lenders have agreed to take specific steps to promote minority housing opportunities throughout the metropolitan area. A copy of this Agreement is attached hereto and incorporated as Exhibit H. This is the first such agreement of its kind in the nation, and is a significant step forward to promote fair housing. We are currently negotiating a Voluntary Compliance Plan with the Greater Hartford Board of Realtors. These negotiations are in the final stages, and we are confident that final agreement will be reached in the very near future.

LAWRENCE L. THOMPSON

Sworn to before me this 25th day of August 1975.

ALAN M. COHEN
COMMISSIONER OF THE SUPERIOR COURT

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SUPPLEMENTAL AFFIDAVIT OF LAWRENCE L. THOMPSON DATED SEPTEMBER 12, 1975

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

CITY OF HARTFORD, et al, Plaintiff v. CARLA A. HILLS, et al, Defendants	Civil Action No. H-75-258

SUPPLEMENTAL AFFIDAVIT OF MR. LAWRENCE L. THOMPSON

Lawrence L. Thompson, first being duly sworn, deposes and says:

1. My previous affidavit dated August 25, 1975, described the method and standards pursuant to which the applications for community development block grant (CDBG) assistance under Title I of the Housing and Community Development Act of 1974 (HCDA) were reviewed and approved. This affidavit, accompanied by relevant portions of the administrative record, will set forth the actual steps taken and the determinations made in the review and approval of CDBG applications of each of the seven communities joined as defendants to this litigation and of the City of Hartford. Since the processing of all CDBG applications was conducted in a uniform fashion the narrative accompanying the within record is detailed only as to the first few applications discussed.

2. Although my first affidavit should be consulted for a more thorough discussion of the standards and scope of review applied to the CDBG applications, it must be kept in mind that the applications subject to this litigation are for

funds designated as "entitlement grants" pursuant to Sections 103 and 106 of the HCDA. See 42 U.S.C. 5303, 5306. In reviewing applications for entitlement grants, Section 104 of the HCDA permits the Secretary to exercise her discretion to disapprove the application only under the limited circumstances where specific findings can be made. A CDBG can be disapproved only if the statement of needs and objectives of each community are plainly inconsistent with significant facts and data, generally available; if the proposed activities are plainly inappropriate to meet the needs and objectives of each community; or if the application fails to comply with the requirement of law or proposes ineligible activities. See Section 104(c), 42 U.S.C. 5304(c). If the Area Office were unable to reach any determination within 75 days of the filing of the CDBG application, the grant would be deemed automatically approved pursuant to Section 104(f), 42 U.S.C. 5304 (f). Therefore. the exercise of discretion permitted in reviewing applications for entitlement grants is limited to whether there are facts and data adequate to justify disapproval.

3. Congress envisioned and HUD's regulations provide that the review of CDBG applications is to be a streamlined process with heavy reliance upon certifications from the applicant, thereby relieving HUD of the initial burden of making detailed findings on matters subject to certification. With respect to the eligibility of activities described in the Community Development Plan and Program and to the adequacy of the HAP, HUD's more thorough review is limited, nevertheless by the standards contained in Section 104(c) of the Act. The Act and HUD regulations place heavy reliance upon post grant review and monitoring of CDBG activities. See Sec. 104(d) of the HCDA, 42 U.S.C. 5304(d) and 24 C.F.R. 570.900, et seq. If it is subsequently determined that a community violates any requirement of the statute, the Secretary has ample authority to adjust the amount of grant by terminating outstanding grants or reducing the amount of future entitlement grants. See Sec. 111 of the HCDA, 42 U.S.C. 5311.

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4. The administrative record will show that the review of the CDBG applications was thorough and independent; that the determinations were reasonable and based on statutory requirements; that the community and housing needs and objectives as defined by each community were not plainly inconsistent with significant facts and data, generally available; and that the proposed activities were not plainly inappropriate to meeting the needs and objectives identified by each community. Moreover, it will show that each application satisfied basic legal and programmatic requirements and that all CD activities were determined to be eligible.

5. Processing of the CDBG applications began with the submission of the applications. HUD regulations set April 15, 1975, as the final day for submission in order that all CDBG funds would be committed by the end of the fiscal year. See 24 C.F.R. 570.300(a). The applications were submitted on HUD forms and consisted of the Community Development Plan Summary, the Community Development Program, the Housing Assistance Plan (HAP), the Community Development Budget and the certifications of compliance with various legal and program requirements. 24 C F.R. 570.303. The comments of the State and area-wide A-95 clearinghouses must also accompany the application. In the case of the co-defendant communities, the Capitol Region Council of Government (CRCOG) comments were accompanied by the comments submitted to it by the City of Hartford and other interested parties, and the responses of the subject community.

6. Upon receipt of the applications, the Community Planning and Development (CPD) Division of the Area Office conducted an initial screening of the submission to determine that all elements had been received and properly prepared. The community then was notified of the acceptance of the application and of any deficiencies discovered during initial screening. Upon receipt of all additional information, the

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CPD staff conducted a thorough review of the Community Development Plan and Program and the HAP and distributed copies of relevant portions to other Divisions of the Area Office for their comments and recommendations. At the conclusion of the review process an administrative review memorandum for each application, signed by Mr. Daniel P. Kolesar, was submitted to me in which the major elements of the application were summarized and commented upon, the comments of other Area Office Divisions were reconciled and a course of action was recommended. This document also indicated that all legal and programmatic requirements had been satisfied. Due to the controversy involving the applications of the suburban communities in the Hartford SMSA, in these cases a memorandum to the file was prepared under Mr. Kolesar's signature in which the comments of the CRCOG and the City of Hartford, the responses by the subject community and the findings of the Area Office were summarized.

7. During the processing of these applications it became apparent that communities were experiencing difficulty in developing data concerning the number of lower income families expected to reside within their boundaries. See affidavit of William J. Flood, Area Economist. The processing of all applications not previously approved was suspended during May pending further instructions from the Central Office. As soon as instructions were received (see paragraph 14 and Exhibit B to my first affidavit), a standard letter was addressed to all communities which had not received approval letters for their CDBG applications. This letter dated June 2, 1975, required each community to supplement their "expected to reside" entry on Table II of the HAP or to explain how they would identify a more appropriate needs figure by the time of their second year application. See Flood affidavit. Because significant facts and data, generally available and plainly inconsistent with the applications did not exist at the time of the approval decisions, the Area Office determined, in accordance with Assistant

Secretary Meeker's memorandum (See Exhibit B of my first affidavit), that the "expected' to reside" information contained in the subject applications did not present a basis on which to disapprove them.

8. In acting upon the CDBG applications for each of the communities joined as co-defendants to this litigation, I reviewed the administrative review memoranda developed by the CPD Division as well as the special memoranda which dealt with the comments of the City of Hartford (see paragraph 6 supra) and the HAPs, and determined, based on the information then available, that I was obligated by the HCDA and HUD regulations to approve each application

9. Since plaintiffs' claims concerning our approval determination constitute challenges to the assessment of housing needs provided by each community in its housing assistance plan (HAP) and the alleged failure of proposed activities to meet those needs, I have limited this affidavit to those aspects of the administrative record which pertain to such challenges and allegations.

ENFIELD

10. The Town of Enfield submitted its application for CDBG assistance on April 15, 1975. See Exhibit A in the Enfield file. Included in that submission were copies of the Assurances required by Section 104 of the HCDA (Exhibit B), the Housing Assistance Plan (Exhibit C), the Community Development Plan Summary and Community Development Program (Exhibit D) and the A-95 review comments from the Capitol Region Council of Governments (CRCOG) (Exhibit E), the Town's response to the comments by the City of Hartford to the Enfield CDBG application with the Hartford letter attached thereto (Exhibit F), and the comments of the State Commission on Human Rights, another reviewer for the state A-95 clearing house. (Exhibit G).

11. The comments of the State Human Rights Commission related to the inadequacy of HUD's assurance form and the Town's affirmative action plan. It was not necessary

for the Area Office to respond to the first class of comments because they constitute legal objections to a HUD form rather than substantive comments on the community's application. The latter class of comments related to the adequacy of plans that are not required by the HCDA or HUD regulations. HUD had not received copies of these plans with the applications and was in no position to reach a determination concerning the merits of the comments. In approving East Hartford's application, we noted that if the Town sought to comply with the affirmative action requirements contained in HUD regulations at 24 C.F.R. 570.601(b)(4)(ii) by implementing such a plan, the comments of the State Agency should be considered. (See Exhibit N).

12. The document captioned "Assurances", HUD Form 7015.12, (Exhibit B) was submitted by the applicant on April 14, 1975, and certifies that Enfield will comply with equal opportunity requirements contained in Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968, as well as other relevant provisions. Other certifications contained on this form relate to the adequacy of efforts to permit citizen participation in the preparation of the application, to the provision of benefits under the Uniform Relocation Act, and to the assumption of the role of Federal official pursuant to the National Environmental Policies Act. In order to satisfy the requirements of Section 104(b)(2) of the HCDA, 42 U.S.C. 5304(b)(2), Enfield indicated that the Community Development Program submitted gives maximum feasible priority to activities benefitting low-and moderate-income families or aid in the prevention or elimination of slums or blight. The town also indicated that certain activities specified in the plan and program served community development needs having a particular urgency. See Exhibit B.

13. The CRCOG gave a positive recommendation concerning the CDBG application of the Town of Enfield. See Exhibit E. The comments of the City of Hartford and the

responses of the Town of Enfield (Exhibit F) were summarized in a memorandum to the file, dated May 15, 1975, signed by Daniel P. Kolesar, Director of the Community Planning and Development Division of the Area Office. (See Exhibit H). Hartford's comments were addressed to the alleged inadequacy of the HAP in accommodating the housing needs of low-and moderate-income families, the alleged over-emphasis on recreational activities and the alleged inadequacy of the civil rights assurances in view of the low percentage of minorities residing in the community, Mr. Kolesar, in general found that there were no significant facts and data generally available to support the allegations of the City with respect to Enfield's HAP, that the recreational activities were subject to certifications that they benefit low and moderate income families and were a product of the Town's citizen participation efforts, and that a low percentage of minority population alone is not a basis for rejecting civil rights certifications. He did indicate that HUD reviews and program evaluations could review compliance with Civil Rights certifications.

14. By letter dated April 25, 1975, Mr. Kolesar notified Enfield of the deficiencies discovered in its application based on HUD's initial review. (Exhibit I) In response to this letter, the Town of Enfield transmitted by letter dated May 5, 1975, revised forms and documents, including revisions to Tables I and III of the HAP. (Exhibit J) These revisions to the HAP were still regarded by the Area Office to be inadequate and further revisions were requested and received on or about June 19, 1975. (Exhibit K).

15. The applicant received the form letter referred to in paragraph 7, supra. (See Exhibit L) and the Flood affidavit. The Town responded by letter dated June 5, 1975, in which the Town Manager indicated that Enfield would elect the option of undertaking a study of housing needs in order to amend the existing HAP and improve the data for the second year application.

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16. The certifications stating that the activities contained in the CDBG application would serve urgent community development need were found largely to be unnecessary in view of the fact that those activities relate to low and moderate income families and to the elimination of slums and blight. The comments of the City of Hartford, CRCOG or the State Human Rights Commission created no basis for rejecting the civil rights assurances contained in Exhibit B.

17. In reaching my final decision to approve the Enfield Application subject to the guidance in the approval letter dated June 30, 1975, (Exhibit N) I considered the comments of the reviewing officials in the Area Office and the administrative review memorandum signed by Mr. Kolesar and dated June 30, 1975. (See Exhibit O). Following the administrative memo, a Grant Agreement was executed. (See Exhibit P).

18. The deficiencies contained in the original HAP were corrected by subsequent submissions. To the extent that there had been negative comments on the HAP or other aspects of the application. I found that the comments either were satisfied by the redrafts of the HAP or did not constitute a basis upon which the CDBG application could be disapproved. Although the "expected to reside" portion of Table II of the HAP was based upon somewhat insufficient data, no comments from any source cited significant facts and data, generally available which were plainly inconsistent with the estimate of housing needs. The application was complete and satisfied all legal and programmatic requirements and all approved CD activities were determined to be eligible.

EAST HARTFORD

19. The Town of East Hartford submitted its application for CDBG assistance on March 24, 1975. Included in that submission were copies of the Assurances required by Section 104 of the HCDA (Exhibit A of East Hartford file), a resolution

of the Town Council (Exhibit B)[1], the Community Development Plan Summary and Community Development Program (Exhibit C), the HAP (Exhibit D), the A-95 review comments from CRCOG (Exhibit E) and State Commission on Human Rights and Opportunities (Exhibit F), and East Hartford's response to the A-95 Comments (Exhibit G). Attached to the A-95 review comments were copies of comments submitted to CRCOG by Education/ Instruccion, Inc. (Exhibit H) and the City of Hartford (Exhibit I).

20. East Hartford's assurances, contained on HUD Form 7015.12, (Exhibit A), submitted by the applicant on March 24, 1975, certified that East Hartford will comply with the requirements described in paragraph 12 supra. In order to satisfy the requirements of Section 104(b)(2) of the HCDA, East Hartford indicated that the Community Development Program submitted gives maximum feasible priority to activities benefitting low-or moderate-income families or aiding in the prevention or elimination of slums or blight. They also indicated that certain activities specified in the plan and program served community development needs having a particular urgency. See Exhibit A. The activity identified as serving an urgent community development need was a drainage project in the Simmons Road/Willowbrook area. (See Exhibit C).

21. The comments of Education/Instruccion, the City of Hartford and the two A-95 review agencies primarily challenged the adequacy of the HAP in assessing the housing needs of non-elderly lower income families residing or expected to reside in the community; challenged the adequacy of the equal opportunity assurances; alleged the failure to consider regional housing needs in the HAP and charged East Hartford with failure to relate the drainage project to the needs of low and moderate income families residing in the town and the Region. A summary of these comments

1 / Not a [illegible] submission

and HUD's disposition of them dated May 19. 1975, is contained in a memorandum to the file signed by Daniel P. Kolesar. (See Exhibit J).

22. With respect to the HAP, the Area Office determined that the estimated needs and the statement of housing goals in the original HAP submission were deficient. Revisions of Tables II and III of the HAP were requested and were received on or about April 10, 1975. (See Exhibit K). The statement of housing needs and goals was enlarged. Although we recognized certain inadequacies in the data relating to those lower income families, expected to reside in the community, none of those agencies commenting cited any significant facts or data, generally available to HUD or the Town of East Hartford which were plainly inconsistent with the estimate of housing needs or which indicated that the statement of goals was plainly inappropriate to serve those needs. In my opinion, this deficiency did not constitute a violation of any legal or programmatic requirement which would constitute a basis upon which the application could be disapproved. East Hartford's application was approved by letter dated May 2, 1975, but the Town was informed of the need for improved data prior to the approval of the second year CDBG application. (See Exhibit L). A subsequent letter reflecting updated Departmental requirements (see paragraph 14 Exhibit B to my first affidavit) was sent to East Hartford to emphasize the requirement that they develop improved data prior to their next submission (Exhibit M). East Hartford by letter dated June 6, 1975 replied positively. (See Exhibit N). Since East Hartford's application was approved prior to the development of clarifying instructions, we were unable to suspend processing CDBG application and extend the options contained in the June 2, 1975 letters sent to the other communities under the jurisdiction of the Area Office. See discussion at paragraph 7 supra. and the affidavit of William J. Flood.

23. Neither the HCDA, nor HUD regulations require accommodation of "Regional

housing needs" beyond those expected to reside in East Hartford. Therefore, the criticisms directed to the failure to address Regional issues were found not to constitute a basis for rejecting the application.

24. The proposed drainage project was determined by the Area Office to constitute an urgent community development need. This determination was made on the basis of additional data requested by the Area Office and received on or about April 9, 1975. See summary contained in Exhibit J.

25. With respect to the other items certified to by East Hartford, there was no substantial evidence that the assurances were inadequate. The comments of the State Commission on Human Rights were handled in the same manner as described in paragraph 11 supra. (See Exhibit L).

26. In reaching my final decision to approve the East Hartford application subject to the guidance contained in the approval letter (Exhibit L), I considered the comments of the reviewing officials in the Area Office and the review memorandum dated April 24, 1975, signed by Mr. Daniel P. Kolesar. (See Exhibit O). Any negative comments including those of outside agencies and organizations, were weighed and were either found not to constitute a basis for disapproval of the application or accommodated by means of an instruction contained in the approval letter to guide future activities subject to HUD's monitoring procedures. Following issuance of the approval letter, a Grant Agreement was executed. (See Exhibit P). The activities listed in the Community Development Program were determined to be eligible and the application was complete in all respects and all programmatic and legal requirements were satisfied.

WEST HARTFORD

27. The CDBG application of West Hartford was received in the Area Office on April 15, 1975. Included in that submission were copies of the Section 104

assurance form (Exhibit A of the West Hartford file); the HAP (Exhibit B); the Community Development Plan Summary and Community Development Program (Exhibit C); the comments of the A-95 agencies including those from CRCOG (Exhibit D) and the State Commission Human Rights (Exhibit E); the City of Hartford's letter to CRCOG criticizing the West Hartford application (Exhibit F), and the response by West Hartford to the criticisms contained in the City of Hartford's letter to the CRCOG. (Exhibit G).

28. The Assurances form submitted by the applicant on April 15, 1975, indicated that activities contemplated in the Town's Community Development Program would give maximum feasible priority to activities which will benefit low-and moderate-income families or aid in the prevention or elimination of slums and blight. The form also indicates that certain of those activities would meet community development needs having a particular urgency. (See Exhibit A).

29. The Memorandum to the file, signed by Mr. Kolesar, dated May 14, 1975, reviews the comments by the CRCOG and the City of Hartford, and concludes that these comments by the CRCOG do not support the negative recommendation of the CRCOG. The comments by the CRCOG allege primarily the failure of West Hartford to address in its application "regional housing needs" of lower income and minority families. The CRCOG concedes the Town's application reflects the needs of West Hartford as set forth in previous planning documents, but states that the HCDA imposes a previously non-existent duty to address these regional problems. Nothing in HUD's CDBG Regulations or, in my opinion, the statute, imposes such a duty, and nothing in CRCOG's comments indicates that West Hartford's community development activities, estimate of housing needs, or statement of housing goals were plainly inconsistent with significant facts and data or were plainly inappropriate for meeting the community's needs, or violated legal or

programmatic requirements. (See Exhibit I) The comments by the City of Hartford and Education/Instruccion Inc. raised issues, in addition to the alleged failure to accommodate "regional housing needs", relating to the purported inadequacy of West Hartford's statement of needs and goals in its HAP and to the alleged unacceptability of the Town's civil rights assurances if it fails to take steps to modify purported patterns of racial and economic housing segregation. We found that these comments were either inaccurate or not supported by adequate data or specific allegations of illegal activities necessary to disapprove the application. The comments by the State Commission on Human Rights were handled in the same manner as described in paragraph 11, supra.

30. The initial Area Office review of the West Hartford application indicated deficiencies in the Community Development Plan and the HAP, and a letter seeking correction of these deficiencies was sent on April 30, 1975. (See Exhibit J). The June 2, 1975 letter described in paragraph 7, supra, was sent to West Hartford. (See Exhibit K). In its response, West Hartford concluded that there was at that time insufficient data to accurately calculate the number of lower income families expected to reside in the community and outlined the study it was conducting to develop more suitable information for the second year application. See Flood affidavit and Exhibit L in the West Hartford file.

31. As amended, the Community Development Plan and Program, and the assurances were found to be adequate and were not contradicted by substantial evidence. The HAP was weak, but marginally acceptable. The Town of West Hartford was notified of the approval of its CDBG application by letter dated June 27, 1975. (Exhibit M). In reaching the decision to approve the application, I considered the comments of Area Office reviewers and the administrative review memorandum signed by Mr. Daniel P.

Kolesar and dated June 24, 1975. (Exhibit N). The approval letter instructed West Hartford to modify their HAP as soon as better data became available and emphasized the priority to be given to providing housing units for large lower-income families. Negative comments, including those of outside agencies and organizations, were weighed and were either found not to constitute a basis for disapproval of the application or were accommodated by means of instructions to guide future activities subject to HUD's monitoring procedures. Following issuance of the approval letter, the Grant Agreement was executed. (See Exhibit O). All approved CD activities contained in the Community Development Program were determined to be eligible and the application was complete and satisfied all legal and programmatic requirements.

VERNON

32. The Town of Vernon filed its CDBG application on April 15, 1975. That submission was immediately found to be deficient and the Area Office returned it to the Town by letter dated April 18, 1975. (Exhibit A in the Vernon file). The revised submission was received on April 25, 1975, and it included the Assurances (Exhibit B); the Community Development Plan Summary and Program (Exhibit C); the CRCOG comments and recommendation (Exhibit D); and the April 10, 1975 response by the Town of Vernon to Hartford's comments to CRCOG accompanied by a copy of the Hartford letter dated April 7, 1975 (Exhibit E).

33. Vernon's HAP was found to be inadequate and the Town submitted its revision by letter dated June 23, 1975 (Exhibit F).

34. A memorandum to the file dated May 14, 1975, signed by Mr. Daniel P. Kolesar reviewed the comments submitted by the City of Hartford to the CRCOG and the responses by the Town of Vernon, and concluded that there were no significant facts and data, generally available which would indicate that the Town's application should be disapproved. (ExhibitG).

35. For the reasons described in paragraph 7 supra and in the Flood affidavit, the Area Office sent a letter dated June 2, 1975, to the Mayor of Vernon informing him of the need for improved data on those lower-income families expected to reside in the community and of the options for obtaining such information. (Exhibit H). The Town's response was contained in a letter dated June 13, 1975. (Exhibit I).

36. As amended, the Community Development Plan and Program, the Assurances and the HAP contained in Vernon's CDBG application were found to be adequate and to comply with all legal requirements. All proposed activities were found to be eligible. The Town was notified of the approval of its application by letter dated June 27, 1975. (Exhibit J). In reaching the decision to approve the application, I considered the comments of Area Office reviewers and the administrative review memorandum signed by Daniel P. Kolesar and dated June 24, 1975. (Exhibit K). Negative comments, including those of outside agencies and organizations, were weighed and were either found not to constitute a basis for disapproval of the application or were accommodated by means of instructions contained in the approval letter to guide future activities subject to HUD monitoring procedures. Following issuance of the approval letter, a Grant Agreement was executed. (See Exhibit L).

GLASTONBURY

37. The CDBG application of the Town of Glastonbury was filed with the Department on April 15, 1975. Included with that application were the Assurance forms (Exhibit A in the Glastonbury file); the Community Development Plan Summary and Program (Exhibit B); the HAP (Exhibit C); the comments of the CRCOG (Exhibit D); and letters from the Glastonbury Town Manager (Exhibit E) and from the Glastonbury Redevelopment Agency (Exhibit F) responding to criticisms filed by City of Hartford (Exhibit G).

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38. A memorandum to the file dated May 16, 1975, signed by Mr. Daniel P. Kolesar reviewed comments of the CRCOG, those submitted by the City of Hartford to the CRCOG, and the responses by the Town of Glastonbury, and concluded that there were no significant facts and data, generally available contained in those documents which would indicate that the Town's application should be disapproved. (Exhibit H).

39. For the reasons described in paragraph 7, supra and in the Flood affidavit the Area Office sent a letter dated June 2, 1975, to the Town Manager of Glastonbury informing him of the options available to strengthen those aspects of the HAP related to the needs of those lower income families expected to reside in the community. (Exhibit I). The applicant indicated in its response dated June 4, 1975, that it would undertake a definitive study to develop a more appropriate needs figure in relation to the second year submission. (Exhibit J).

40. During this period of review, the Area Office was requested to investigate the equal opportunity complaint filed by Education/Instruccion Inc. See discussion contained at paragraph 18 and 19 of my first affidavit. A copy of the report filed by my staff is attached as Exhibit K. The findings contained in that report resulted in the imposition of a requirement in the approval letter to Glastonbury that prior to tendering the Community Development Block Grant Agreement and therefore prior to expenditure of funds, further assurances pertaining to affirmative action to achieve equal employment opportunity must be received. (Exhibit L).

41 In reaching the above decision on the CDBG application of Glastonbury, I considered the comments of Area Office reviewing officials and the administrative review memorandum signed by Mr. Daniel P. Kolesar dated June 6, 1975, and supplemented on June 16, 1975. (Exhibit M). Negative comments by reviewing officials and outside agencies and organizations in addition to those contained in the equal opportunity

complaint were considered and were found not to constitute a basis upon which the application could be disapproved. All CD activities were determined to be eligible. Assuming agreement is reached concerning compliance with additional equal opportunity assurance requirements all legal and programmatic requirements will have been satisfied.

WINDSOR LOCKS

42. The Town of Windsor Locks submitted its CDBG application on April 15, 1975. Included in that submission were the Assurances form (Exhibit A); the Community Development Plan Summary and Program (Exhibit B); the HAP (Exhibit C); the CRCOG comments (Exhibit D); and the response of the Town of Windsor Locks (Exhibit E) to the criticism filed with the CRCOG by the City of Hartford (Exhibit F).

43. A memorandum to the file dated May 19, 1975, signed by Mr. Daniel P. Kolesar reviews the A-95 comments concerning the CDBG application of Windsor Locks and concludes that these comments contained no significant facts or data, generally available which would result in the disapproval of the Windsor Locks application. (Exhibit G).

44. The response to a June 2, 1975 letter identical to that described in paragraph 7, supra, the Town of Windsor Locks elected to develop in conjunction with its second year submission data concerning the lower income families expected to reside in the community. (Exhibit H).

45. Upon receipt of supplemental information, the CDBG application of Windsor Locks was deemed to comply with all legal and programmatic requirements, all approved Community Development activities contained in the Community Development Program were determined to be eligible and the application was approved by letter dated June 26, 1975. (Exhibit I). In reaching this decision, I considered the comments of the Area Office reviewing officials and the administrative review memorandum signed by Mr. Daniel P. Kolesar. (Exhibit J). Any negative comments contained in these re-

views and those submitted by other parties were weighed and found either not to constitute a basis upon which to disapprove the application, or were incorporated as instructions in the approval letter to guide future activities subject to HUD's continued monitoring. Following issuance of the approval letter, a Grant Agreement was executed. (See Exhibit K).

FARMINGTON

46. The CDBG application of the Town of Farmington was received on April 15, 1975. Included in that submission were the Assurances form (Exhibit A); the Community Development Summary Plan and Program (Exhibit B); the HAP (Exhibit C); the CRCOG A-95 review comments for Farmington (Exhibit D); the response of the Town of Farmington (Exhibit E) to the criticisms contained in the letter submitted to the CRCOG by the City of Hartford (Exhibit F).

47. A memorandum to the file dated May 14, 1975, signed by Mr. Daniel P. Kolesar reviews the A-95 comments concerning the CDBG application of Farmington and concludes that these comments cite no significant facts or data, generally available which would result in the disaporoval of the Farmington application. (Exhibit G).

48. Farmington was sent a letter dated June 2, 1975, the basis for which is described in paragraph 7, supra and the Flood affidavit, indicating the options available to the community for improving the data concerning the lower income families expected to reside in the community. (Exhibit H). In his June 10, 1975 response to this letter the Town Manager stated that the applicant would conduct a survey of employers during the current program year. (Exhibit I). Subsequently, Farmington submitted its questionnaire to HUD for comment, and Area Economist Flood responded with his suggestions for improvement. (Exhibit J).

49. Upon receipt of additional information the CDBG application for Farmington

was deemed to comply with all legal and programmatic requirements, all approved Community Development activities contained in the Community Development Program were determined to be eligible and the application was approved by letter dated June 24, 1975. (Exhibit K). In reaching this decision, I considered the comments of the Area Office reviewing officials and the administrative review memorandum dated May 7, 1975, and the addendum thereto dated June 18, 1975. (Exhibit L). Any negative comments contained in these reviews and those submitted by other parties were weighed and found either not to constitute a basis upon which the application could be disapproved or were incorporated as instructions in the approval letter to guide future activities subject to HUD's monitoring procedures. Following issuance of the approval letter, a Grant Agreement was executed. (See Exhibit M).

HARTFORD

50. The application for CDBG assistance filed by the City of Hartford was processed in a similar manner, using the same standards of review applied to the applications received from the communities described above.

51. The Area Office received the Hartford application on April 15, 1975. Included in that submission were the Assurances form (Exhibit A); the Community Development Plan and Program (Exhibit B); the HAP (Exhibit C); and the A-95 review comments of the CRCOG (Exhibit D).

52. The Area Office requested additional information from the City in letters dated April 22, 1975, and June 2, 1975. (Exhibits E and F). With respect to HUD's request to supplement data on the lower income persons expected to reside in the community, the city elected to initiate efforts to develop additional data in conjunction with its second year submission. Table II of the City's HAP contained an estimate that no additional lower income families could be expected to reside in the community.

53. Upon receipt of additional information, the CDBG application for Hartford was deemed to comply with all legal and programmatic requirements, all approved Community Development activities were determined to be eligible and the application was approved by letter dated June 30, 1975. (Exhibit G). In reaching this decision, I considered the comments of the Area Office reviewing officials and the administrative review memorandum dated June 24, 1975. (Exhibit H). Any negative comments relating to the HAP, Civil Rights or other matters contained in these reviews and those submitted by other parties were weighed and found either not to constitute a basis upon which the application could be disapproved, or were incorporated as instructions in the approval letter to guide future activities subject to HUD's monitoring procedures. Following issuance of the approval letter, a Grant Agreement was executed. (See Exhibit I).

CONCLUSION

54. The administrative records attached hereto reflect differing opinions among members of the Area Office as well as outside agencies regarding the adequacy of the CDBG applications in fulfilling the goals and requirements of the HCDA and HUD regulations. The negative comments of Area Office review officials, which in only a few cases correspond to the substantive criticisms cited by the City of Hartford to the CRCOG, were all summarized in the administrative review memoranda and were found not be a basis upon which the application could be disapproved. This dialogue which it is my policy to encourage was and will continue to be useful to me in evaluating CDBG applications and performing HUD's monitoring responsibilities. As to the HAPs, as mentioned previously, each community has been instructed to conduct studies, most particularly in expected to reside, in order to generate more

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satisfactory housing needs data for their HAPs prior to the submission of their second year CDBG application. However, I must also remain conscious of the policy of the HCDA to avoid the substitution of the priorities of the HUD staff and others for those established by locally elected officials after permitting citizen participation in the preparation of the applications and of the limited basis on which disapproval action can be justified. I am convinced that each of the applications filed complied with the requirements of the HCDA and HUD regulations, and that based upon available facts and data I had no alternative other than to approve those applications. Under the Department's delegations of authority, that is my decision to make.

Lawrence L. Thompson

Sworn to and subscribed before me this 12th day of September 1975.

ALAN M. COHEN
Commissioner of the Superior Court

AFFIDAVIT OF WILLIAM J. FLOOD DATED SEPTEMBER 12, 1975

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

CITY OF HARTFORD, et al,
Plaintiff

V.

CARLA A. HILLS, et al,
Defendants

Civil Action No. H-75-258

AFFIDAVIT OF MR. WILLIAM J. FLOOD

William J. Flood, first being duly sworn, deposes and says:

1. I am the Area Economist of the Hartford Area Office of the Department of Housing and Urban Development. I have occupied that position since November 1972.

2. As Area Economist I am responsible for reviewing certain aspects of all applications (including the Housing Assistance Plan (HAP) filed pursuant to the Community Development Block Grant program (the Block Grant Program) created by Title I of the Housing and Community Development Act of 1974 (the act), 42 U.S.C. 5204 (c) et seq. In my review of applications for the first program year, I examined each application as required by Section 104(c) in order to determine if:

(1) The Community Development Plan Summary was plainly inconsistent with generally available significant facts and data;

(2) The Community Development Program was plainly inappropriate to stated needs and objectives;

(3) The HAP was plainly inconsistent with generally available significant facts and data.

3. In performing part (3) of this review, I examined the Expected to Reside information submitted by each applicant on Table II C of the HAP (see Sec. 104(a)(4)(A)) of the act; 42 U.S.C. 5304 (a)(4)(A). In performing the review, I was guided by the memorandum dated May 21, 1975 from David O. Meeker, Jr., Assistant Secretary for Community Planning and Development (the Meeker memorandum), a true and correct copy of which is attached as Exhibit B to the original Affidavit of Mr. Lawrence L. Thompson and which is incorporated herein by reference. Numbered paragraph 1 of that memorandum required that the reviewer calculate, by means of 1970 census Journey to Work [1/] (Vol. P.C. (2)-6D) data, "a figure for each applicant not previously approved, which will reflect an estimate of potential needs for those employed in and expected to reside within that community or county boundaries." The Meeker memorandum further required in numbered paragraph 2 that the HUD figure be compared with the applicant's figure appearing in Table II C of its HAP. Finally, numbered paragraph 3 of that memorandum provided that in cases where the reviewer felt that the needs table (Table II C) of the HAP did not include a significant portion of the potential need, the applicant should be told that before a grant contract would be tendered the applicant had to:

(a) adopt the HUD figure as a first-year figure, or

(b) adopt its own figure with appropriate citation of data and methodology, or

(c) Indicate what steps the applicant intended to take to identify a more appropriate needs figure with its second-year application.

[1/] Journey to Work is one of several subject reports contained in the U.S. Decennial Census and is considered data relevant to the question of Expected to Reside, Table II C of the HAP. The volume provides data on residence vs. principle place of work.

4. In the case of the Hartford Standard Metropolitan Statistical Area, (SMSA) the 1970 census data concerning Journey to Work was, with one exception, broken down only on a portion of county-within-an SMSA basis rather than on a municipality-by-municipality basis. The methodology set out in the Meeker memorandum was designed to isolate Expected to Reside data on a municipality-by-municipality basis. Because of the way Journey to Work volume data is presented for the Hartford SMSA, (i.e. county portions only), isolation of individual suburban municipalities is not possible. See U.S. Census of Population, 1970; Journey to Work 620-621. It was therefore not possible to calculate the figure for each applicant referred to in numbered paragraph 1 of the Meeker memorandum to compare that figure with the figure included in Table II C of the corresponding HAP as required by numbered paragraph 2. The only exception was the City of Hartford, for which the census data included figures on a number of non-residents working in the City. No information was given, however, on the number of residents living in Hartford and working in other SMSA municipalities.

5. There was not any other generally available information or data, of which I was aware, which would have enabled me to calculate a figure as required in numbered paragraph 1 of the Meeker memorandum or otherwise to make a determination as to the accuracy of the figures supplied by the defendant towns in Table II C of the HAPs.

6. During the course of my review of CDBG applications, I examined the documents submitted to the Hartford Area Office by the Capitol Region Council of Governments (CRCOG) in its role as a commenting agency under OMB Circular A-95. These documents contain certain material on Journey to Work and "Expected to Reside" in the defendant towns. True and correct copies of these documents are attached to the Supplemental Affidavit of Mr. Lawrence Thompson and are incorporated herein by reference. Based

upon my review of these documents it was and is my opinion that the above referenced material was made up exclusively of vague and unsupported assertions as to the number of persons expected to reside in each of the suburban communities in question, and that, as such, this material did not constitute "significant facts and data, generally available" within the meaning of 24 C.F.R. 570.306 (b) (2) (i). I therefore concluded that it was not appropriate to recommend disapproval of the HAP based on this material.

7. In reviewing the HAPs, in general, I reviewed the methodology the communities used to develop its statement of needs to determine if the method used was satisfactory. In many cases it was not, including several of the communities in question. I communicated my objections to the Community Planning and Development staff who informed the towns of the need for additional information. Responses were received (see for example the administrative record for Enfield and West Hartford contained in the Thompson Supplemental Affidavit.)

8. In accordance with the instructions in numbered paragraph 3 of the Meeker memorandum, the Community Planning and Development Division of the Area Office issued a form letter on June 2, 1975 to all Connecticut grantees whose applications had not been approved before receipt of the Meeker memorandum. All of the defendant towns except East Hartford (whose application had been approved prior to receipt of the memorandum) were sent a copy of this form letter. True and correct copies of those form letters are contained in the respective administrative record files accompanying the Supplemental Affidavit of Lawrence L. Thompson. As explained above, it was impossible to prepare a HUD figure for the "Expected to Reside" category for any of the seven defendant towns. Accordingly, the June 2 letter offered the six towns

whose applications were as yet unapproved, only choices b and c described in paragraph 3 above. Pending receipt of a town's response to the June 2 letter, processing on that town's application was suspended. Each of the six towns responded, and true and correct copies of those responses are contained in the respective administrative record files accompanying the Supplemental Affidavit of Lawrence L. Thompson. Each Town chose option c, thereby obligating itself to take steps to submit a more appropriate needs figure for the second program year.

9. East Hartford, whose application had been approved prior to receipt of the Meeker memorandum, was sent a letter on June 5, 1975. East Hartford responded on June 6, 1975, and true and correct copies of the June 5 letter and East Hartford's response are contained in East Hartford's administrative record file accompanying the Supplemental Affidavit of Mr. Lawrence L. Thompson.

William J. Flood

Sworn to before me this 12th day of September 1975.

ALAN M. COHEN
COMMISSIONER OF THE SUPERIOR COURT

A 128

FOURTH AFFIDAVIT OF LAWRENCE L. THOMPSON DATED OCTOBER 10, 1975

UNITED STAT. DISTRICT COURT

FOR THE DIS ICT OF CONNECTICUT

:ITY OF HARTFORD, et al, Plaintiff	
V.	Civil Action No. H-75-258
:ARLA A. HILLS, et al, Defendants	

FOURTH AFFIDAVIT OF MR. LAWRENCE L. THOMPSON

Lawrence L. Thompson. first being duly sworn, deposes and says:

1. My previous affidavits dated August 2, and September 12, 1975 described the :ethod and standards pursuant to which the applications for CDBG funds under Title I of the lousing and Community Development Act of 1974 were reviewed and approved, as well as the :ctual steps taken and the determinations made in the review and approval of CDBG appli-:ations of each of the seven defendant communities in this action. This affidavit will lescribe my analysis of the current status of the City of Hartford on the issue of receiving :eallocated CDBG funds.

2. The current HUD regulations governing reallocation of CDBG funds are set forth in 24 CFR 570.409 published at 40 FR 42348, September 12, 1975. That section provides in :ubsection (c) that reallocated funds will be used to make grants to eligible communities :ith "urgent needs" as that term is defined in Sec. 570.401(b)(1) and (3) That latter :ection provides that an urgent need exists where: (1) CDBG entitlement amounts are in-

sufficient to complete a categorical Urban Renewal project over a three year period commencing January 1, 1975, or if the amount in any one of those three years is insufficient to maintain a progress schedule to achieve completion of the Urban Renewal project thereby adversely affecting the Federal interest in the project; and/or (2) the locality through cost increases beyond its control would be unable to complete a program commenced under specifically enumerated, now terminated, categorical grant programs other than Urban Renewal, and additional assistance is warranted. The Regulations placing reallocation of funds on an "urgent needs" basis apply only to funds available for reallocation as of August 15, 1975 per 24 CFR 570.409(b). Under those rules, communities submitting an analysis as to urgent needs between January 1, 1975 and June 30, 1975, and again between September 12, 1975 and the present date could be considered potential applicants for reallocated funds. The City of Hartford failed to submit such an analysis within either of those time periods whereas four localities (New [illegible], West Haven, Danbury and Middletown) did make such a submission. Therefore, if a decision had to be made today for reallocating funds under present regulations and authorization, Hartford could not even be considered.

3. The fact that the reallocation regulations published on September 12. 1975 apply only to funds available as of August 15, 1975 means that there is no current regulatory authority governing the reallocation of funds which might result from a final decision in this suit in favor of the City of Hartford. The statutory standard for reallocation of funds which requires reallocation "first, in any metropolitan area in the same state. . ." (42 U.S.C. 5306(e)), provides Hartford with no priority right to funds reallocated as a result of this suit, nor does it oblige HUD to reallocate such funds to Hartford as opposed to any other eligible recipient within the Hartford metropolitan

area, or even to reallocate such funds to the Hartford metropolitan area as opposed to any of the other ten metropolitan areas within the State of Connecticut.

Lawrence L. Thompson

Sworn to before me this 10th day of October 1975.

ALAN M. COHEN
COMMISSIONER OF THE SUPERIOR COURT

AFFIDAVIT OF ALLAN F. THORNTON DATED NOVEMBER 6, 1975

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

CITY OF HARTFORD, et al.,

Plaintiffs,

v.

CARLA A. HILLS, et al.,

Defendants.

AFFIDAVIT OF ALLAN F. THORNTON

Allan F. Thornton, first being duly sworn, deposes and says:

1. I am Director of the Economic and Market Analysis Division under the Assistant Secretary for Housing Production and Mortgage Credit in the Department of Housing and Urban Development. I have held that position since creation of the Division in 1970, and have been in the business of analyzing housing needs and demand for about 40 years---as economist or market analyst for FHA and private consultants from 1935 to 1950, as Director of the FHA Research and Statistics Division from 1951 to 1970, and in my present position since 1970. I have received M.A. and Ph.D. degrees in Economics from the American University during the period of my FHA-HUD employment and during the same period have served on numerous interagency committees and task forces dealing with housing statistics (especially with the U.S. Bureau of the Census, U.S. Council of Economic Advisers, U.S. Office of Management and Budget, and the Federal Reserve and Federal Home Loan Bank Systems).

2. As Director of the Economic and Market Analysis Division of HUD, I am responsible for developing techniques and training for field-stationed

HUD economists who prepare housing needs studies for all areas of the country used by the Department in determining the feasibility of housing proposals submitted by local agencies and private developers under HUD or Federal Housing Administration (FHA) housing assistance and insurance programs. Upon the enactment of the Housing and Community Development Act in August 1974, I participated in the development of the format and procedures to be followed by applicants for Community Development Block Grant (CDBG) funds in preparing the Housing Assistance Plan (HAP) required as part of the CDBG application.

3. Calculation of the housing needs of lower-income persons in a particular community involves consideration of numerous factors including demographic data, condition of the housing stock, anticipated construction by the private housing industry, and migration patterns. The entry for those expected to reside in the community is but one of the several factors which were to be developed locally in order to determine housing needs. Although such estimates had not previously appeared in HUD market analyses, we anticipated no particular difficulties on the part of municipalities in developing estimates on a local municipality basis; and in our initial instructions for preparation of the HAP's instructed applicants to develop their own methodology for calculating the expected to reside entry.

4. The time pressures in developing forms and procedures and providing general instructions to HUD field office personnel for administering the entire block grant program did not permit us to address at that time any new data problems posed by the various HAP entries. It was not until March 1975 that we became aware of the shortcomings of typical local community efforts in developing the expected to reside entry. We then

collaborated in a Departmental effort to develop a methodology which could be suggested for use by local communities. The immediate result of that effort was the memorandum of David O. Meeker, Jr., dated May 21, 1975, which I understand appears in the record as Exhibit B to the first affidavit of Lawrence Thompson.

5. In arriving at the options contained in that memorandum, the Department was aware that the Journey to Work volume published as part of the 1970 census would not provide useful data for SMSA's with a population of fewer than 250,000 or for municipalities with a population of fewer than 50,000. However, our investigation of generally available significant facts and data, which included conversations with officials of the Bureau of the Census as well as other Government agencies, indicated that the Journey to Work tables were the only readily available data published by the Federal government which could provide assistance to local communities within the time limitations for the submission of first CDBG applications. Bureau of the Census officials did not at that time call our attention to any related special tabulations which had been run in the past.

6. The possibility of obtaining a new special tabulation for all communities with population of 10,000 or more from the raw data which constituted basis of the 1970 Census Journey to Work volume was examined. It was judged that the process of defining the required data and format, contracting for the tabulation, programming and debugging the program and running the tapes for the entire United States would take approximately four months at a cost of approximately $100,000. The process of running tapes for limited areas of the United States would probably have saved no more than one week. Therefore, these data could not have been available either for preparing or for reviewing the first year CDBG applications.

Affidavit of Allan F. Thornton Dated November 6, 1975

7. Approximately two months ago we learned of a census tabulation program funded in part by the U.S. Department of Transportation and made available to local governmental entities whereby special tabulations of commuting patterns were run from Bureau of Census tapes for approximately 215 participating entities. A portion of one such tabulation has been submitted by plaintiffs in this litigation.

8. Our review of samples of those tabulations indicated that the data were not always broken down by municipality and that in some cases transportation zones were used instead of municipalities. The data are not aggregated by destination of commuters. Most significantly, the commuter information provides neither household nor income characteristics which could be useful in measurement of locality housing needs for lower income families expected to reside in an applicant municipality.

9. Since the Bureau of Census officials did not direct attention to the existence of these Department of Transportation tabulations, and since their distribution had been limited to specific agencies which had collaborated with DOT, they hardly constitute generally available data of which HUD Area Economists could be expected to have been aware. Even were such tabulations brought to the attention of an Area Economist, however, he would have had available no procedures and criteria by which to estimate from them a figure for lower-income persons expected to reside in a particular municipality.

Allan F. Thornton

ALLAN F. THORNTON
Director
Economic and Market Analysis Division
Department of Housing and Urban Development

Subscribed and sworn to before me this 6th day of November 1975.

Bernard E. Sands
Notary Public

June 30 1976
My Commission Expires

SUPPLEMENTAL AFFIDAVIT OF WILLIAM J. FLOOD
DATED NOVEMBER 7, 1975

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

CITY OF HARTFORD, et, al,
Plaintiff

V.

CARLA A. HILLS, et, al,
Defendants

Civil Action No. H-75-258

SUPPLEMENTAL AFFIDAVIT OF WILLIAM J. FLOOD

William J. Flood, first being duly sworn, deposes and says:

1. This is to supplement my affidavit dated September 12, 1975, and to respond to the affidavits of Paul Davidoff and Jonathan Coleman dated October 21, 1975, respectively.

2. Mr. Davidoff and Mr. Coleman state in their respective affidavits that even though published reports of the Census Bureau did not contain data sufficiently refined to be of use in evaluating the "expected to reside" entry in the housing needs table in the Housing Assistance Plan for each of the defendant communities, they have recently discovered a source of data which is unpublished but might have been useful in estimating a figure for Table IIc of the HAP. Neither affidavit contradicts the facts set forth in my previous affidavit and certain statements contained in their affidavits are incorrect.

3. It is necessary to bring perspective to the discussion of "generally available, significant facts and data" and explain the limitations inherent to the

review of CDBG applications. The Hartford Area Office had thirty-three applications for CDBG entitlement funds which had to be acted upon within 75 days, if approval was not to be automatic. The "expected to reside" entry is but one element in the three tables of the HAP. If I were required to launch a detailed research effort to verify every item in the HAP of each applicant or to evaluate alternative methodologies and sources of data not suggested by the statute, regulations or Departmental instructions, the review would not have been completed within the statutory review period. The suggestion that HUD be familiar with each survey or tabulation, published and unpublished, in the files of government agencies or university libraries poses an impossible standard upon the Department. What might be common practice for a sholarly research project, with no limitations upon time and resources, is of little relevance in the context of processing a CDBG application. It should be noted that the significant facts and data presented on October 21, 1975 in the Coleman Affidavit of that date were only discovered by Mr. Davidoff on October 20, 1975 (see Davidoff paragraph 9). It appears then that Mr. Davidoff, as one of several City of Hartford Commentators' in the A-95 review process, did not use this data in presenting what is alleged to be "significant facts and data which were generally available" in order to inform HUD's judgement during the review process. He apparently did not know of this unpublished data prior to October 20, 1975.

4. The unpublished census data for which a tabulation may be ordered hardly constitutes generally available, significant facts and data upon which an expected to reside figure could be calculated. The practical problems associated with ordering such a survey for the entire Department is described in the affidavit of Mr. Alan Thornton. I was not instructed to conduct independent detailed research efforts to develop alternative data or authorized to make expenditures for that purpose.

Supplemental Affidavit of William J. Flood
Dated November 7, 1975

5. A review of the journey to work figures contained in the tabulation prepared for the Connecticut Department of Transportation, Bureau of Planning and Research indicates that there is no designation of the income level of those individuals commuting from one municipality to another. Table II of the HAP is concerned only with the housing needs of lower-income persons. Therefore, this tabulation does not constitute significant data, as required by Statute and HUD regulations, upon which I could recommend that individual expected to reside entries in the HAP's of the seven suburban communities be modified or disapproved. This tabulation was never brought to the attention of the Area Office during the processing of the CDBG applications.

6. The deficiency, (i.e. income of commuters), in the data is best illustrated by directing the courts attention to the net commuting figures contained in the Coleman submission of October 21, 1975, between the City of Hartford and the seven suburban towns. The figures are as follows:

Origin	Destination	Number of Trips	Net Commutation
Hartford RMDR*	Vernon	143	
Vernon	Hartford RMDR	1505	1362
Hartford RMDR	Enfield	24	
Enfield	Hartford RMDR	1919	1895
Hartford RMDR	Windsor Locks	418	
Windsor Locks	Hartford RMDR	938	520
Hartford RMDR	West Hartford	5516	
West Hartford	Hartford RMDR	10261	4745
Hartford RMDR	Glastonbury	342	
Glastonbury	Hartford RMDR	1662	1320

* RMDR- is the remainder of the City of Hartford exclusive of the Central Business District (CBD).

Hartford RMDR East Hartford	East Hartford Hartford RMDR	4182 6534	2352
Hartford RMDR Farmington	Farmington Hartford RMDR	489 1309	820
Hartford CBD Vernon	Vernon Hartford CBD	0 371	371
Hartford CBD Enfield	Enfield Hartford CBD	0 504	504
Hartford CBD Windsor Locks	Windsor Locks Hartford CBD	0 153	153
Hartford CBD West Hartford	West Hartford Hartford CBD	21 2683	2662
Hartford CBD Glastonbury	Glastonbury Hartford CBD	0 574	574
Hartford CBD East Hartford	East Hartford Hartford CBD	0 2467	2467
Hartford CBD Farmington	Farmington Hartford CBD	0 356	356
		Total Net Commutation <u>into</u> City of Hartford	20,101

Ignoring the <u>quality</u> of the data, the printout shows an overwhelming <u>net</u> commutation of workers into the City of Hartford from the seven communities.

7. The action taken by the Area Office with respect to review of the HAP's submitted by the seven defendant communities was reasonable, based upon the generally available, significant facts and data. Plaintiffs have not cited any study, either during the administrative review of the CDBG applications or during this litigation, which would permit me to conclude that the statement of housing needs of lower-income persons contained in any of the HAP's in question were plainly inconsistent with the actual needs of the community.

WILLIAM J. FLOOD

(Sworn to November 7, 1975)

A 139

MEMORANDUM OF DAVID MEEKER DATED MAY 21, 1975

TELEGRAM

MAY 2 3 1975

ALL AREA OFFICE DIRECTORS
ALL CPD DIVISION DIRECTORS

FROM: David O. Meeker, Jr., Community Planning and Development, C

SUBJECT: Estimation of Housing Assistance Needs

As has been noted in previous commications and in the regulations governing the community development block grant applications, careful attention is required to the "expected to reside" portion of the housing needs identified in the housing assistance plan. The difficulty facing both the applicant and the HUD reviewers in determining, in particular, those employed in the community who could be expected to reside in that community, has become apparent. Data sufficient to establish a reasonably accurate universe of needs for any given community is not necessarily readily available data in the first year of the program.

In recognizing this difficulty, however, HUD cannot ignore the data that does exist, primarily in the "Journey to Work" tables of the U.S. Bureau of the Census. Neither can the applicant. Where an applicant makes no attempt to address itself to an estimate of the needs of those already employed within its boundaries but living elsewhere, steps must be taken to strengthen that housing assistance plan in its needs assessment, provided that "Journey to Work" statistics are available. (Data is generally available for SMSA's over 250,000 in population.) Other generally available data may also be utilized.

The following steps, therefore, should be instituted by the field reviewers:

1. Utilizing the attached methodology and census data citations, develop a figure for each applicant not previously approved, which will reflect an estimate of potential needs for those employed in and expected to reside within that community or county boundaries.

   Compare that estimate with the figure included in the application for expected to reside (Table II, C of the HAP).

   Where, in the opinion of the reviewer, it is reasonable to assume that a significant portion of the potential need has not been included in the needs table of the HAP, the applicant should be contacted indicating that prior to HUD's tender of contract the applicant must:

   (a) Adopt the HUD figure as a first year only figure in recognition of the existence of a need not otherwise identified in the applicant's HAP, or

(b) Adopt its own figure with appropriate citation of data and methodology, consistent with the general universe of need and not limited to short-term goals, or

(c) Indicate what steps the applicant intends to take in identify a more appropriate needs figure by the time of its second year submission.

and communicate that position in writing to HUD over the signature of the official authorized to submit and certify to the original application. For purposes of justification, in the request to the applicant, citation should be made to #570,303(c)(8) of the regulations calling for HAP estimates of those "planning or expected to reside"in the community as a result of planned or existing employment facilities, and #570,306(b)(1) governing requests for additional information.

While the above approach does not require the adoption of a particular needs figure in the first year, so long as the applicant indicates its willingness to address the needs estimate before second year approval, an applicant may find it prudent to do so by amending its HAP before or after first year approval. Applicants should be encouraged to do so wherever possible.

For those already approved, a similar analysis should be undertaken at the earliest possible time. All approved applicants will receive additional direction with respect to improvement of their HAPs prior to second year approval, and the dificiencies against the enclosed methodology in those applications already approved can be noted at that time. Further instructions with respect to second year approval requirements will be forthcoming after the end of the fiscal year. If you experience any difficulty in utilizing the attached methodology, please contact the CD Office of Field Support.

Assistant Secretary

Attachment

A 141

Memorandum of David Meeker Dated May 21, 1975

METHODOLOGY

This methodology is designed to compare the percentage of low-income workers who work, but do not live in a given community, with the average ratio for suburban cities or counties in the SMSA. For cities or counties above the average, follow all six steps. For cities or counties below the average, begin with Step 2 and omit Step 4.

Step	Source of Data
1. Compute number of workers in the city or county with incomes under $10,000.	Census PC (2)6D "Journey to Work" Table 2
2. Add workers with incomes under $10,000 expected due to new jobs.	HAP or other data sources available to Area Office
3. Multiply by percent of workers in the SMSA by suburan cities or counties who live in the city or county in which they work.	Census PC (2) 6D, Table 2 (Add all workers under $10,000 who work and live in the same city or county and divide by all workers in those cities or counties with income under $10.000)
4. Subtract workers under $10,000 who live and work in the city or county.	Census PC (2) 6D
5. Subtract single workers. If data is not known for a specific locality, use SMSA average.	Census PC (1) Table 165
6. Subtract 1/2 of married woman, husband present, using SMSA average. (Married women with husbands present do not necessarily have household incomes over $10,000; 50% is a reasonable estimate for this purpose.)	Census PC (1) Table 165

Note: Completion of Step 4 gives you the number of workers. Steps 5 and 6 are designed to translate workers into households.

A 142

Memorandum of David Meeker Dated May 21, 1975

Step		Source of Data
1. All workers in unit of governme with income under $10,000.	41,139	PC (2) 6D pp 533 & 567
2. Workers under $10,000 expected to new job.	5,713	Local HAP or other data source available to A.O.
	46,852	
3. Expected to reside -- 1/3 of workers under $10,000 in suburb live in city in which they work	x 33.3%	PC (2) 6D, Table 2, SMSA
	15,617	
4. Workers under $10,000 who work — live in city	-9,503	PC (2) 6D, p. 553
	6,114 workers	
5. Number of single workers (21% c SMSA labor force are single).	-1,834	PC (1) D-24, pp 24-781
6. Number of married women in the labor force with husbands prese - 9% - estimated to have income over $10,000. (1/2 of the 18% the SMSA-women in the labor for who are married with husbands p	- 435	PC (1) D-24, pp 24-781
	4,395 Households "Expected to Reside"	

nt.)

Memorandum of David Meeker Dated May 21, 1975

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
HOUSING ASSISTANCE PLAN

TABLE II - HOUSING ASSISTANCE NEEDS OF LOWER INCOME HOUSEHOLDS

12/30/75

ICANT

2. APPLICATION NUMBER

3. ☒ ORIGINAL ☐ AMENDMENT

4. PROGRAM YEAR From: 7/1/75 To: 6/30/76

CES OF G NEEDS	NUMBERS OF HOUSEHOLDS								
	TOTAL			BLACK*			SPANISH (or other identity)		
	Total	Large Families**	Other	Total	Large Families**	Other	Total	Large Families**	Other
EQUIRING rst displaced	10,000	1,600	8,400	3,500	700	2,800	2,000	400	1,600
ND HANDICAPPED	2,200	-0-	2,200	700	-0-	700	115	-0-	115
V/HANDICAPPED	7,800	1,600	6,200	2,800	700	2,100	1,885	400	1,485
TO BE	200	100	100	90	50	40	80	29	51
ND HANDICAPPED	24	-	24	10	-	10	8	-	8
V/HANDICAPPED	176	100	76	80	50	30	72	29	43
OUSEHOLDS EX- SIDE IN LOCALITY	-0-								
ND HANDICAPPED									
V/HANDICAPPED									

S AND METHODS

ATTACHED.

ata was received on 1/20/75 and compared with our own material. We found no ificant differences. We prefer to proceed with our own data since we were to break down data to neighborhoods. For additional data on needs, see ground Report, page 13, attached to rear of Table I.

AFFIDAVIT OF RICHARD SUISMAN DATED SEPTEMBER 18, 1975

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CITY OF HARTFORD, ET ALS.

Plaintiffs

VS. CIVIL ACTION NO. H-75-

CARLA A. HILLS, ET AL.

Defendants

RICHARD SUISMAN, being duly sworn, deposes and says:

1. I am a member of the Court of Common Council of the City of Hartford and a Plaintiff in this action.

2. I have been a member of the Court of Common Council for almost four years.

3. I am also a member of the Connecticut Housing Investment Fund, Inc., a non-profit housing corporation dedicated to home ownership and integration; a former director on the St. Francis Hospital Board and the Hebrew Board for the Aged; a member of Language Readiness, which provides pre-school training for spanish-speaking youngsters; and a member of the Capitol Region Council of Governments and Chairman of its Housing Committee.

4. As a member of the Court of Common Council, I have taken an oath to uphold the Constitution of the United States

and the Constitution of the State of Connecticut, and all the laws adopted pursuant thereto.

5. My duties and responsibilities as a Councilman include the adoption of an annual budget to provide for statutorily-mandated municipal services, and the adoption of ordinances and resolutions to provide for the health, safety and welfare of the residents of Hartford.

6. In order to perform my duties and responsibilities as a Councilman, I have access to vital departmental information.

7. As a member of the Court of Common Council, I serve as Chairman of the Economic Research and Development Committee, and also of the Public Safety and Public Utilities Committee. I am also a member of the following committees: Housing and Code Enforcement, Redevelopment, Capital Improvements and Civic Center, Education and Recreation and Community Services and Environmental Protection.

8. As Chairman of the Economic Research and Development Committee, I was directed by Council resolution to insure that Hartford's application for community development grant funds complied with the provisions of the Housing and Community Development Act of 1974.

9. The Committee was further directed to review the applications of our suburban communities with the assistance of City staff and to take appropriate action through the A-95 regional review process to insure compliance with the 1974 Act.

10. The Committee was also authorized to submit reviews and comments in respect to each of the suburban applications to the Department of Housing and Urban Development's (HUD) area, regional and national offices.

11. The City of Hartford is an inner-city with a concentration of lower income persons within the meaning of the 1974 Act.

12. Over 50% of the City's population are receiving public or general assistance benefits, or are living exclusively on social security or unemployment benefits.

13. The official July unemployment rate was approximately 13.6%, but this percentage does not take into account individuals who have given up job hunting because of the unavailability of work.

14. The City's unemployment rate is not uniform among minority and non-minority residents.

15. In some of the City's minority neighborhoods, the unemployment rate exceeds 40%.

16. The City's current mill rate is 79.0.

17. The effective tax rate of the City is one of the highest in the nation for cities with a population in excess of 100,000.

18. The City's tax rate may not be increased to provide for additional revenues, since each increase in the mill rate results in an increase in the flight of economically viable

businesses and families, increased tax delinquencies and increased abandonments.

19. Even at its current level, the tax rate is resulting in a predominantly white flight to the suburbs, which is so substantial that the Hartford region has been described as "a white noose around the City of Hartford."

20. The State of Connecticut has not provided the City with the funds necessary to provide statutorily-mandated services to its residents.

21. Currently, the State ranks approximately 46th out of 50 states in terms of aid to municiplities, and approximately 47th in aid to education.

22. The City of Hartford's current budget for fiscal 1975-76 was passed only after substantial cuts in services, lay-offs, pay cuts and pension contribution cuts.

23. These cuts in services and lay-offs come at a time when there is an increasing demand for municipal services as a result of the nation's depressed economy.

24. In passing the budget, the Court of Common Council trimmed $4.5 million (over 3%) from the City Manager's proposed budget, in spite of the fact that his budget message characterizes his proposal as cutting services to "bone marrow".

25. The cuts in services and lay-offs made by the Court of Common Council in adopting the budget will further depress the City's economy and add to the general human misery prevalent throughout the City.

26. The City has experienced a correlation between increasing poverty and increasing crime, particularly in those neighborhoods with substantial slums and blight.

27. An additional problem which is threatening the City's tax base is the increasing percentage of the City's land area which is tax-exempt.

28. Currently, 55% of the entire land area of the City is tax-exempt.

29. The City of Hartford has a substantial, and increasing minority population which consists of predominantly low and moderate income persons.

30. In 1950 the minority population of the City was 7.1%, according to federal census figures, which increased to 35.5% by 1970. Since 1970, this percentage has increased substantially.

31. In 1954, when Brown v. Board of Education was decided, the minority enrollment in Hartford's schools consisted of 17.1% of the student body. Today, over 80% of our student body consists of minorities.

32. Unless the isolation of the region's poor and minority population within the territorial boundaries of Hartford is addressed in the near future, the Court of Common Council will be totally unable to perform its legislative functions, and provide statutorily-mandated services to the City's residents.

34. In fact, Hartford is already worse off in many respects than New York City, as evidenced by the attached report of Richard P. Nathan, which was submitted to HUD.

35. Mr. Nathan found, after reviewing federal census materials, that in terms of the disparity in poverty and living conditions between the City of Hartford and its suburban communities, the Hartford region is the third worst region in the nation. The New York region is only tenth.

Richard Suisman

Subscribed and sworn to before me this 18th day of September, 1975.

Barry S. Zitser
Commissioner of the Superior Court

A 150

AFFIDAVIT OF JOSEPH ALLEYNE DATED SEPTEMBER 18, 1975

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CITY OF HARTFORD, ET ALS
Plaintiffs

vs.

CARLA A. HILLS, ET ALS
Defendants

CIVIL ACTION NO. H 75-258

AFFIDAVIT

I, JOSEPH ALLEYNE, being duly sworn, do depose and say:

1. I am the Director of the Department of Social Services of the City of Hartford and have held that position since March of 1970.

2. Prior to my appointment as Director, I held the position of Deputy Director from November 1968 through September 1969.

3. Prior to my appointment as Deputy Director, I held the position of Casework Supervisor for five years.

4. As the Director of the Department of Social Services, it is my responsibility to administer all town general assistance duties, set forth in Title 17 of the Connecticut General Statutes, for the City of Hartford.

5. As the Director of the Department of Social Services, I have access to all records, files and data within the Department.

6. As of July 1975, the active general assistance caseload of the Department of Social Services was 4,327, with an average of approximately 1.6 persons per case.

7. This compares with an active caseload of 2,955 for December of 1973, and a caseload high of almost 5,000 in February 1975.

Affidavit of Joseph Alleyne Dated September 18, 1975

8. Currently, approximately 40% to 45% of the entire town general assistance caseload throughout the State of Connecticut is being administered by the Hartford Department of Social Services.

9. The Department of Social Services provides the maximum authorized amount of assistance to its clients which is reimbursable by the State Department of Social Services, pursuant to Section 17-292 of the Connecticut General Statutes, whenever feasible.

10. The Department of Social Services is not required to provide any maximum or minimum dollar amount of assistance to its clients, but provides the maximum authorized by law because it believes that such amount is necessary to provide its indigent residents with the means of support, as prescribed in Section 17-292 of the General Statutes.

11. In addition to those City residents who receive town general assistance from our Department, there are many City residents who rely on State categorical public assistance, administered by the State Department of Social Services, for their means of support.

12. There are currently approximately 7,500 Hartford families receiving public assistance under the Aid to Dependent Children (AFDC) program.

13. The average family size for an AFDC case in Hartford is 3.5 persons.

14. In addition to the 7,500 AFDC cases, there are approximately 2,000 adult category public assistance cases within the City of Hartford, with an average of between one and two persons per case.

15. All together, approximately 35,000 residents of the City of Hartford are receiving general or public assistance for their means of support.

16. Hartford residents who are receiving State categorical assistance are on the flat grant system.

17. The flat grant system distributes standard monthly dollar amounts to recipients of public assistance which varies only in accordance with family size.

18. Under the flat grant system, a family of four will receive a monthly amount of $331.97.

19. This $331.97 includes a minimum shelter standard of $97.83, with the remaining $234.14 allocated for food, clothing, personal incidentals and household supplies.

20. The minimum shelter standard of $97.83, allocated from the $333.97 flat grant for a family of four, is insufficient to meet the average family's housing needs.

21. Many families have to double-up in overcrowded housing units to live within the flat grant standard.

22. Other families transfer money from food, clothing, personal incidentals or household supplies to raise sufficient moneys to pay their rent, which causes a severe hardship.

23. As a result of the insufficient amount within the flat grant system designated for minimum shelter standard, many families are paying in excess of 25% of their income for housing.

24. The entire budget of the Department of Social Services for the City of Hartford for fiscal 1975-1976 is $13.9 million.

25. In addition to this budget, the City has to allocate several

million dollars which covers State reimbursable expenditures, since the State does not reimburse the City until the end of each fiscal quarter.

26. During my term as Director, many residents of other towns have been referred to the Department of Social Services by the welfare agencies of those towns.

27. During the last two years, the seven suburban towns listed in this action have referred 138 of their residents to Hartford for general assistance benefits.

28. The breakdown for these towns are as follows:

East Hartford	65
Enfield	21
West Hartford	21
Vernon	10
Glastonbury	10
Farmington	7
Windsor Locks	4

29. An example of such a referral was recently before this Court in David Rose v. Joseph Alleyne, Civil Action No. H-75-177.

30. In the Rose case, Mr. Rose, an East Hartford resident, applied for general assistance benefits with the East Hartford town general assistance agency.

31. The East Hartford general assistance agency sent Mr. Rose to the Hartford Y.M.C.A. with enough money to establish a residence at the Y.M.C.A. for a few days.

32. When Mr. Rose requested further assistance from East Hartford, he was refused on the basis that he was now a Hartford resident.

33. The Rose case is an example of how many of Hartford's suburban towns, including the seven listed in this action, violate their duty to "...furnish necessary support to all paupers therein..." Section 17-292 of the Connecticut General Statutes.

34. The Department of Social Services of the City of Hartford cannot turn such individuals away, because once they have established a residence in Hartford, even if just for one night, the City is obligated to provide assistance.

Joseph Alleyne

Joseph Alleyne

Subscribed and sworn to before me this 18th day of September, 1975.

Barry S. Zitser

Barry S. Zitser
Commissioner of the Superior Court

AFFIDAVIT OF WILLIAM SLITT DATED SEPTEMBER 16, 1975

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CITY OF HARTFORD, ET ALS — CIVIL ACTION NO. H 75-258

vs.

CARLA HILLS, ET ALS — AFFIDAVIT

I, William Slitt, being duly sworn, do depose and say:

1. I am the Director of the Department of Housing of the City of Hartford and have held that position continuously since March of 1958.

2. From 1952 until my appointment as Director of Housing, I held the position of Director of Management of the Housing Authority of the City of Hartford.

3. As the Director of Management for the Housing Authority of Hartford, I assumed responsibility for the operation and maintenance of all subsidized housing units within the Authority's jurisdiction.

4. As the Director of Housing, my duties include, but are not limited to, the stimulation and promulgation of housing programs to provide subsidized housing for low and moderate income households, and to assist private sponsors of such housing with the submission of proper applications for governmental subsidization.

5. The term "low and moderate income households" means households

which are unable to obtain decent and adequate shelter within their own financial means, thereby requiring governmental subsidization. The maximum annual income for low income households is $7,500, and for moderate income households is $12,000, depending on family size.

6. The Greater Hartford Region includes the following 29 towns, with a combined population of 669,907, according to the 1970 census: Andover, Avon, Bloomfield, Bolton, Canton, East Granby, East Hartford, East Windsor, Ellington, Enfield, Farmington, Glastonbury, Granby, Hartford, Hebron, Manchester, Marlborough, Newington, Rocky Hill, Simsbury, Somers, South Windsor, Suffield, Tolland, Vernon, West Hartford, Wethersfield, Windsor and Windsor Locks.

7. There are 12,132 subsidized housing units within the Greater Hartford Region, of which 4,653 are low rental public housing, 2,548 are moderate rental public housing and 4,928 are privately sponsored subsidized housing.

8. Seven thousand four hundred twenty-nine, or 61% of the Greater Hartford Region's subsidized housing units are located within the City of Hartford, although the population of Hartford consists of only 24% of the Region's entire population.

9. Seventy-one per cent of the Region's low rent public housing, 46% of the Region's moderate rental public housing and 59% of the Region's privately sponsored subsidized housing are located within the City of Hartford.

10. The percentages mentioned in Paragraph 9 would be much higher

if the figures were limited to Hartford and the seven suburban communities who have been joined as party defendants in this action.

11. Furthermore, the majority of the subsidized moderate rental public housing units within Hartford's suburban communities are limited to the elderly.

12. In addition to the 7,429 subsidized dwelling units within the City of Hartford, there are 6,000 substandard, deteriorated units, which, for all practical purposes, are beyond rehabilitation, and 10,000 dilapidated housing units, which require substantial rehabilitation.

13. I have personally inspected many of the deteriorated and dilapidated housing units within the City of Hartford and have found that these antiquated structures contain some or all of the following deficiencies:

a. Deficient electrical, plumbing and heating systems;

b. Decayed roofs;

c. Hazardous and dilapidated porches;

d. Inadequate garbage and trash disposal facilities; and

e. Rodent infestation.

14. In my opinion, these 16,000 substandard housing units constitute a substantial threat to the health, safety and welfare of their inhabitants.

15. The City's Department of Housing has insufficient manpower and resources to close down its substandard housing units and to relocate the families living within those units.

16. The City of Hartford has an immediate need for 7,500 additional

subsidized low and moderate income housing units, with an additional 2,500 units required over the next one or two years.

17. For the entire Greater Hartford Region, there is an immediate need for an additional 30,000 subsidized low and moderate income housing units.

18. The average approximate cost of constructing a low or moderate income housing unit within the City of Hartford is $25,000, with an additional annual cost of $4,000 for rent subsidization and $1,000 for operating costs.

19. The estimated cost of building and maintaining the 10,000 subsidized low and moderate income housing units required to meet the City's existing and anticipated housing need is approximately $300 million.

20. An additional $60 million would be required to bring all existing substandard housing units within the City up to Code standards.

21. The current budget of the City's Department of Housing is $246,255, which is insufficient to provide the approximately $360 million needed to rehabilitate or construct the housing referred to in Paragraphs 19 and 20.

22. Even if the City were to obtain the necessary $360 million, there is not sufficient vacant land within the City to construct the needed subsidized low and moderate income housing units.

23. I have personally approached, and been approached by, apartment owners in regard to the rehabilitation of their properties to meet Housing Code standards.

24. These apartment owners have described the financial chaos which

they are facing as a result of insufficient funds to meet their tax and mortgage obligations and to undertake the necessary repairs to bring their properties up to Code standards.

25. Many of these owners have offered their properties to the City without cost, so long as their tax obligations are abated.

26. Currently, there are approximately 200 structures, providing 1,000 dwelling units to predominantly the lowest income individuals and families, which are being abandoned annually within the City of Hartford.

27. Ten years ago, there were only two or three abandonments per year.

28. The increasing number of abandonments has resulted in a substantial increase in fires and vandalism.

29. Sixty per cent of all the fires within the City occur in abandoned structures, and the Fire Department estimates that 30% of such fires are the result of arson.

30. The Department of Housing does not have sufficient funds to demolish these buildings, since Federal and State funds available in previous years for demolition have been withdrawn.

31. The City did allocate $40,000 for demolition during the last fiscal year, but these funds were withdrawn in the spring of 1975 due to a budgetary crisis.

32. The Exhibit which was attached to my Affidavit of July 6, 1975, which verifies many of the figures used in this Affidavit, was the result of information supplied by census data, City and State general and public assistance agencies, fire and police records, City Board of Education

reports, private research firms, the State Department of Community Affairs, the City's Redevelopment Agency and the Social Security Administration.

33. The current housing crisis in the City of Hartford is due in part to the large number of individuals and families which reside in the City who are receiving City or State general or public assistance.

34. Currently, approximately 36,000 families reside within the City of Hartford, of which 18,000 pay more than 25% of their annual income for shelter rent.

35. Many of these 18,000 families pay between 35%-40% of their annual income for shelter rent.

36. This large allocation of annual income for rent has resulted in an increase in rent delinquencies, which often deprives property owners of the funds necessary to maintain and rehabilitate their properties and to pay their City taxes.

37. The City's local property tax is so high that every increase in the City's mill rate results in a further increase in property abandonments and delinquencies.

38. At the current mill rate, approximately 25%-30% of gross rent goes to pay the City's local property tax.

39. This compares with a figure of approximately 15%-17% in our suburban communities.

40. As a result of the substantial increase in property abandonments, and the City's high tax rate, the City's effective tax collection rate is currently running at 95%, compared to a rate of 99.9% ten years ago.

41. Unless the City is able to meet the housing needs of its low and moderate income individuals and families in the near future, it is anticipated that there will be a further increase in crime, fires, property decay and abandonment, tax delinquencies, poverty and general human misery within the City of Hartford.

William Slitt

Subscribed and sworn to before me, this 16th day of September, 1975.

Barry S. Zitser
Commissioner of the Superior Court

AFFIDAVIT OF PAUL DAVIDOFF DATED OCTOBER 21, 1975

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CONNECTICUT

---X

CITY OF HARTFORD, et al.,

Plaintiffs,

Civ. No. H-75-258

-against-

CARLA A. HILLS, et al.,

AFFIDAVIT OF PAUL DAVIDOFF

Defendants.

---X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

PAUL DAVIDOFF, being duly sworn, deposes and says:

1. I am Executive Director of Suburban Action Institute. I was retained by the City of Hartford to serve as a consultant with respect to review of Department of Housing and Urban Development procedures in the issuance of grants under the Housing and Community Development Act of 1974 to Hartford suburban communities. I was called as an expert witness at the trial of the above action on September 23, 1975, at which time I set forth fully my background and credentials.

2. I submit this affidavit in response to the affidavit filed by William J. Flood, Area Economist of the Hartford Area office of the Department of Housing and Urban Development, and dated September 12, 1975. The Flood affidavit appears as Exhibit B to the federal defendants' Motion to Dismiss, or, In The Alternative, for Summary Judgment.

Affidavit of Paul Davidoff Dated October 21, 1975

3. Mr. Flood in his affidavit states that as Area Economist he was responsible for reviewing certain aspects of applications for Blcok Grants under the Community Development Program in the Hartford area. Flood's responsibilities included review of the Housing Assistance Plans (HAP) of the applications. The adequacy of these HAPs constituted a basic issue in this case. Mr. Flood states that he examined the "Expected to Reside" information submitted by the applicants on Table II C of the HAP.

4. Mr. Flood states that he was guided in his review of the HAPs by the memorandum issued on May 21, 1975 by David O. Meeker, Jr., Assistant Secretary for Community Planning and Development of HUD. The Meeker memorandum appears in the record as Plaintiff's Exhibit 12. Mr. Flood notes that the Meeker memorandum required reviewers of the HAPs to calculate, by means of the "Journey to Work" data in the 1970 Census, an estimate of potential housing needs of those employed and expected to reside within the applicant community.

5. Mr. Flood maintains in his affidavit that, "In the case of the Hartford Standard Metropolitan Statistical Area (SMSA) the 1970 census data concerning Journey to Work was, with one exception, broken down only on a portion of county-within-an SMSA basis rather than on a municipality-by-municipality basis." Mr. Flood then states that because the Meeker memorandum was designed to isolate expected to reside data on a municipality-by-municipality basis, and because this information was unavail-

able in the 1970 Census as to the Hartford SMSA, it was impossible for HUD to calculate an expected to reside figure for the applicant communities in the Hartford region.

6. Mr. Flood also concludes that in his opinion there was no "other generally available information or data" which would have enabled him to calculate an expected to reside figure as required by the Meeker memorandum.

7. In my testimony before this Court on September 23 I concluded that there was substantial data available by which HUD could make a reasonable estimate of the expected to reside figure for the seven applicant communities whose grants are challenged in this lawsuit. In my testimony I discussed in some detail the various means by which such a calculation could have been made.

8. In addition, Mr. Flood was totally misinformed when he concluded that there was no census data available by which he could respond to the directions set forth in the Meeker memorandum. While it is true that a municipality by municipality breakdown of the journey to work information in the Hartford SMSA was not printed in the Journey to Work volume of the 1970 census for Connecticut (Vol. P.C. (2)-6D), such information is readily available from the Census Bureau. All one need do is to submit a request to the Bureau for a computer printout of that information. It is common practice for researchers and persons requiring information not

contained in printed volumes of the census to request such a printout directly from the Bureau.

9. Furthermore, on October 20, 1975 I sought to determine whether or not there had already been a printout of this Journey to Work data for the Hartford SMSA. I very quickly learned that the Connecticut Department of Transportation, Bureau of Planning and Research in Wethersfeld, Connecticut already had obtained a printout of this precise census data. This agnecy is making a copy of the printout available to the Hartford Planning Department and a copy will be submitted to the Court. I also learned that the Connecticut Department of Transportation had secured this information at least two years ago. It is clear to me that Mr. Flood's affidavit is totally inaccurate and misleading as to its basic conclusions concerning availability of critical information.

Paul Davidoff

Sworn to before me
this 21st day of October, 1975

Notary

RICHARD F. BELLMAN
Notary Public, State of New York
No. 31-4607159
Qualified in New York County
Commission Expires March 30, 1977

DESIGNATION BY APPELLEES

MR. BELLMAN: Let's assume we have a full record.

THE COURT: All right. Let's assume we have a full record. Then your argument is -- your position is, rather, that on that record they ignored things in the record, or they did not comply with their own regulations, and their own regulations represent a correct interpretation of the law under which they are purporting to act.

You don't claim the regulations are cockeyed; merely that they have not followed them.

MR. BELLMAN: That's an accurate statement.

THE COURT: That's accurate.

Then the whole thing can be tested on the basis of the record, I guess.

MR. BELLMAN: Not totally, but basically.

THE COURT: Basically. All right.

MR. BELLMAN: Your Honor, we have outlined in our memorandum how we propose to approach this question of testimony, and we have done several things. First of all, we have submitted to your Honor three affidavits by city officials. What we state is that we are submitting these affidavits in order to conserve the Court's time.

Those affidavits really go to the problems

that exist in the City of Hartford. And what we're saying, we don't think there's any controversy, there shouldn't be any controversy over any of the allegations or statements in those affidavits. And if the defendants are prepared to accept these, we would submit these affidavits for showing the basic problem within Hartford which brings, as we see it, Hartford within the situation that Congress had in mind.

THE COURT: Yes. It provides a background for assessing what the towns have done in stating what their needs are.

MR. BELLMAN: That's number one.

THE COURT: All right.

MR. BELLMAN: So we think by those three affidavits we can cut out a huge chunk of testimony that we had anticipated when we were here last time.

THE COURT: Okay. So let's find out.

Have those affidavits been examined by the government side?

MR. EPSTEIN: Your Honor, we are unable to agree to that stipulation because the affidavits are submitted for the purpose of supporting the plaintiffs' claim of standing, which we have disputed as a legal argument in our brief.

Our contention with respect to these affidavits is that if they are to be used for the purpose of standing, the Court may consider them and give them the weight that the Court feels it is entitled to. As far as a determination of whether the plaintiffs have shown a direct interest in this case, or direct injury, that is a legal argument that is in dispute in this case.

MR. BELLMAN: Well, do they dispute the facts is the issue.

MR. EPSTEIN: But the facts are being used in support of the legal argument.

THE COURT: Well, let's take, for instance, is one of these made by a member of the Council for the City of Hartford?

MR. BELLMAN: That's correct.

THE COURT: All right. As a council member he may have no standing.

On the other hand, he may be in a position to make an affidavit as to what conditions are within the City of Hartford.

MR. EPSTEIN: Your Honor, we also dispute the relevancy of the facts that are contained in those affidavits, which is another reason why we can't stipulate to them.

three affidavits we have just submitted to the Court: one by Mr. Suisman, one by Mr. Alleyne --

THE COURT: Who?

MR. BELLMAN: Mr. Suisman, one by Alleyne and one by Slitt. And we've done that to expedite these proceedings. They deal with conditions in Hartford.

Now, I don't know why counsel is raising other matters. I thought we were dealing with these affidavits and whether they can accept them as to the conditions in Hartford, irrespective of how they got there.

Now, we may have other theories about this case, but they are not emerging from these affidavits, and that's the issue we're talking about.

MR. vomEIGHEN: Your Honor, we have no reason to question the statistics placed on the record by Mr. Slitt, Mr. Alleyne and Mr. Suisman. However, I think we are in no position to categorize them as accurate or inaccurate.

We have no reason to believe that they are inaccurate, but I don't think we should be placed in the position of stipulating to their accuracy. I think they are on the record. These men have sworn --

MR. BELLMAN: They are not going to dispute them, in other words.

MR. vomEIGHEN: We don't think they are relevant and we are not going to dispute them.

THE COURT: All right.

I take it that what we are getting at indirectly here is do we want to take the time to take the testimony of Mr. Suisman, Mr. Slitt and this other gentleman in order to question them as to the accuracy of their figures and their information. If that's not materially in dispute, if there is no --

MR. vomEIGHEN: Excuse me, your Honor.

We do not choose to cross-examine these witnesses.

THE COURT: All right.

You don't want an opportunity to refute what they say factually?

MR. vomEIGHEN: That is correct.

THE COURT: All right. So then to that extent I think I can accept them as being in aid of a application for a temporary injunction - certainly as assistance in whether to grant summary judgment in favor of the government.

MR. BELLMAN: Well, we want to go a step further. I thought we were trying to dispose of this matter

We don't think their testimony is relevant.

MR. BELLMAN: Then you'll stipulate you don't dispute the facts?

MR. vomEIGHEN: No, we will not.

MR. BELLMAN: You see, that's the problem.

THE COURT: What?

MR. BELLMAN: They won't agree that they are not going to dispute the facts.

MR. vomEIGHEN: Of course, the Court can consider the statements of these individuals for whatever they're worth. We don't have any reason to question the accuracy of their statements.

There are certain things in there that create grave problems to us - the allegations of legal activities upon behalf of at least one of the community co-defendants in this case. So we do not stipulate to the accuracy of these facts, but we are not doing to dispute them for purposes of this litigation.

MR. BELLMAN: Then, your Honor, given that understanding, we have in our memorandum, in response to your request, outlined what testimony we would present, have limited our testimony to really three witnesses on our part.

In the memorandum we also state we want to

J O N A T H A N C O L M A N,

called as a witness, being first duly sworn, was examined, and testified as follows:

THE CLERK: Will you state your name for the Court?

THE WITNESS: My name is Jonathan Colman, C-o-l-m-a-n.

THE CLERK: And your address, Mr. Colman?

THE WITNESS: 6 Penwood Road, Bloomfield is my home address.

THE CLERK: Bloomfield, Connecticut?

THE WITNESS: That is correct.

DIRECT EXAMINATION

BY MR. BELLMAN:

Q Mr. Colman, what is your profession?

A My profession is a Municipal Planner.

Q And where are you employed?

A I am employed at the City of Hartford, 550 Main Street.

Q And in what capacity?

A I am the Director of Planning for the City of Hartford and the Director-Secretary for the Planning Commission for the City of Hartford.

Q Could you state your educational background?

A I received an undergraduate degree in geography

from Clark University in Worcester, Massachusetts and a Master's degree in municipal planning from the University of Pennsylvania.

Q How long have you been employed by the City?

A A total of nine years.

Q Could you tell me when you became Director of Planning?

A I first became Director in November, 1967.

Q Could you state what the duties are of the Planning Department of the City of Hartford?

A The duties are varied. Primarily we advise the Planning Commission on matters that are referred to the Commission involving zoning, capital improvements, and general plans and neighborhood plans for the city.

We also advise the City Manager's Office on a variety of projects involving municipal and urban development.

We also represent the City Manager's Office - I do in my capacity as Planning Director - in the administration's activities involving the Capitol Region Council of Government, the Capitol Region Planning Agency, the State of Connecticut's Department of Community Affairs, the Department of Transportation, Department of Environmental Protection and the Federal Department of Housing and Urban Development.

THE COURT: Aren't we concerned not with his qualifications so much as with the existence of data

which is available?

MR. BELLMAN: That is correct, your Honor.

THE COURT: Yes.

MR. BELLMAN: A couple more on background and then I'll move on, your Honor.

Q Mr. Colman, in the capacity as Director of the Planning Department have you had an opportunity to study and relate to the problems that exist, or the housing patterns and development patterns in the suburban areas of Hartford?

A Yes, we have.

Q Could you tell me in what capacity?

A In a number of capacities. Two primarily in working with the Capitol Region Planning Commission in the preparation of their housing opportunities program which they have been working on for the past year, as well as reviewing the community development applications submitted to the Capitol Region Planning Agency for review under the A-95 review procedure, together with my own individual familiarity with having lived in the area for a period of time and dealing with the various town planners and municipal planners in the suburban towns around the capitol region.

Q Now, what role did your office play with respect to the 1974 Housing and Community Development Act?

A We played a dual role. We were one of the key city departments that assisted in the preparation, formulation,

submission and processing of the City's own application for community development block grant funds; and we were also, under the direction of the City Manager, the staff department which advised the council committee which submitted the city's formal comments to the Capitol Region Planning Commission under the A-95 review procedures.

And I sat on, as a staff liaison, the Ad Hoc Regional Planning Commission Committee that reviewed all of the applications for community development block grant funds.

Q Could you tell me what the A-95 review process is?

A Generally speaking, the A-95 process is an administrative review procedure established by the federal government to allow review of applications for federal funding grants.

We deal with two review agencies. There's a state review agency that coordinates the review of state agencies on a particular application; and there's a regional agency that coordinates the review of participants in the region, particularly municipalities who belong to the region, of applications.

And in this instance the Capitol Region Planning Commission was the regional A-95 review agency, and the city participated through that agency.

Q And did that agency make recommendations --

THE COURT: What was that, the Capitol Region what?

THE WITNESS: Capitol Region Council.

THE COURT: C.R.C.O.G.?

THE WITNESS: That is correct, your Honor.

THE COURT: Carries the official designation with it?

THE WITNESS: I guess so. I don't --

THE COURT: All right.

Anyway, they have a recognized function in this whole planning area?

THE WITNESS: Yes, sir.

BY MR. BELLMAN:

Q It's true, is it not, Mr. Colman, that the 1974 Act, itself, provides for this A-95 review process with respect to these grant applications?

A That is correct.

Q Now, how many applications did the City of Hartford comment on through this A-95 procedure?

A Nine applications.

Q I take it the seven applications involved in this lawsuit were among those nine?

A Yes, they are.

Q And which two town applications were commented on which are not involved in this lawsuit?

A Bloomfield, Connecticut and Manchester, Connecticut.

Q Now, in working on this A-95 process did you work --

review comment process -- did you work with any other groups or agencies?

A Yes, we did. We worked with other city staff, particularly the city's housing staff, redevelopment agency staff and staff assigned from the Manager's Office, and the Finance Department, as well as the Corporation Counsel's Office which retained the Suburban Action Institute to assist in the review of these applications and in the preparing of the city's comments for submission to the Capitol Region Planning Agency.

Q To assist in your testimony I wish you would, at this point, briefly describe the nature of the application that you commented on through this process.

THE COURT: Well, we have seven of them here, haven't we?

MR. BELLMAN: Well, it was a uniform application form and I would like the witness simply to state the various categories of the form.

THE COURT: Have you got a sample form?

MR. BELLMAN: They're part of the record, your Honor. They're in the record.

It will just take a second.

THE COURT: Okay.

A This is a sample of one of the applications. We reviewed their statement of needs, their long-term objectives,

their short-term objectives set forth by the applicant, their overall community development program, which is basically the funding laid out for the various activities, first year funding, second and third year funding, as well as their complete Housing Assistance Plans, which were basically the fourth significant part of each application that we reviewed.

Q Now, Mr. Colman, I would like to at this time turn to the individual applicant communities and I'm going to ask at this point to go one at a time through these communities and we'll do this in alphabetical order, simply for purposes of fairness. Start with the Town of East Hartford.

THE COURT: Now, wait a minute.

I don't think I'm concerned with a complete review. I'm concerned with whether or not there was data available which was ignored by HUD.

If you can identify that as being contained within the applications or elsewhere, that is the kind of evidence we would like to get out of this witness.

MR. BELLMAN: Right.

Q (By Mr. Bellman) Mr. Colman, where is East Hartford located?

A It's located directly east of the City of Hartford, on the other side of the Connecticut River.

Q Now, was there data available on the population of

racial characteristics of this community?

A Yes, there was published U.S. census data and data published by the Regional Planning Commission that we found readily and easily available to review, both in terms of the town itself and the application that they prepared.

THE COURT: Available in the census figures, you say?

THE WITNESS: Yes sir, the 1970 census figures; and figures that the Regional Planning Commission prepared using the census figures.

BY MR. BELLMAN:

Q Could you state what the population of East Hartford was?

A According to the 1970 census, the population of East Hartford was 57,583 persons.

Q What was the racial makeup of that population?

A It was primarily white. There were only 1.3 per cent of the population that was minority, according to the 1970 census.

THE COURT: Racial minority, or what do you mean by "minority"?

THE WITNESS: Black and Puerto Rican.

THE COURT: Was that what you meant?

THE WITNESS: Yes, sir.

THE COURT: 1.3 per cent colored?

give some light to it. It won't take long. We want to set the framework --

THE COURT: Well, maybe it won't take any longer, but I urge you not to spend time building up a lot of minutiae. Let him specify in a general way what these factors are that should have been very significant and controlling if he wants to, but let's not go into each one with great elaboration. Is that possible?

MR. BELLMAN: That's possible, your Honor.

THE COURT: I don't want to do too much violence to the way you've organized your case and I don't want you to have to cut it to pieces just to accommodate me. But at the same time --

MR. BELLMAN: I understand. But it is difficult, your Honor, to present testimony by saying, "Do only this."

THE COURT: All right.

MR. BELLMAN: We have to set some framework.

BY MR. BELLMAN:

Q Mr. Colman, was there information available with respect to the economics, the economic characteristics of the population of East Hartford?

A Yes, there was. Published data by the U.S. Census Bureau and the Regional Planning Commission.

Q What did that show?

A That showed that the median family income in East Hartford was approximately $10,500. That the median sales price for housing over the period 11 November, 1973 through November, 1974 was approximately $40,000.

That there was very little developable land left in the community. That primarily the housing was single family owner-occupied with relatively low vacancy rate.

Q Was there information available as to the availability of subsidized housing in East Hartford?

A Again, published data indicated that there are approximately 1200 subsidized housing units in the town as of December, 1974.

Q What was this published data?

A Regional Planning Commission data.

Q Was there published data available in terms of the economic opportunities available -- excuse me -- employment opportunities available in East Hartford?

THE COURT: Well, he says the best of any city in the state.

Didn't you?

A Certainly in a concentrated basis. It has excellent employment opportunities.

According to the Connecticut Department of Commerce, the Connecticut Department of Labor and the Regional Planning

Commission data there was 43,000 job opportunities in East Hartford in 1970, with the highest concentration of manufacturing employment in the region.

Q Is there any information available as to the number of Hartford residents that were working in East Hartford?

A Yes. Again Regional Planning Commission data indicates that approximately 4600 Hartford residents work in the Town of East Hartford. That data is also available through the State Department of Labor.

Q What year was that figure from?

A 1972.

THE COURT: 4600 Hartford?

Q (By Mr. Bellman) Mr. Colman, was there information available as to the number of square feet of non-residential development that has occurred in recent years in East Hartford?

A Yes, there is. The Connecticut Department of Commerce publishes regularly major industrial and corporate construction activity, and according to published data by the Connecticut Department of Commerce it indicates that between the period 1970 to 1974 there was either completed or under construction approximately 716,200 square feet of floor space in the Town of East Hartford.

Q Now, Mr. Colman, I take it you did review --

THE COURT: He didn't answer the question. Is this residence floor space?

THE WITNESS: Non-residential floor space.

THE COURT: What about residences?

THE WITNESS: I do not have the figures on residence, but they are also published.

Q (By Mr. Bellman) This non-residence, would it be expressed commercial and industrial development? Is that correct?

A It's commercial, industrial, warehousing, office, shopping plazas.

THE COURT: Non-residential.

Q Now, you reviewed the application submitted by East Hartford. Could you tell me how much money East Hartford applied for it?

A East Hartford applied for $439,000. And they propose to use the money: approximately 14 per cent for housing, approximately 37 per cent for public improvements, approximately 9 per cent for the elderly and handicapped, 40 per cent for planning and management administration.

Q Did you provide any comments to the A-95 review agency concerning the adequacy of the Housing Assistance Plan submitted by East Hartford?

A Yes, we did.

Q Did you reach any conclusions with respect to the adequacy of that plan?

A Yes, we did. We reached two major conclusions:

One, that the Housing Assistance Plan was not responsive to the directives set forth in the regulations for what needed to be included in a Housing Assistance Plan; and, secondly, that they did not adequately deal with the directives concerning those persons expected to reside in the community who are to be considered as part of a Housing Assistance Plan.

Q Now, could you tell me why you reached those two conclusions?

A We reached the conclusions because we believe that the data they use was plainly inconsistent and inappropriate with available data that we have, particularly the data of the United States Census and the Regional Planning Commission.

We noted that they developed their need estimate for those requiring estimates on a waiting list of households who might be using their public housing. We believe that that is a very narrow perspective to utilize in terms of those who might need assistance. Because there are only certain persons who actually qualify for public housing and there are other families who do not qualify for public housing, but do qualify for other subsidized housing program opportunities.

We also noted that they, in determining a basis for overcrowded housing units, did not use the standard figures of 1.01 persons per room in developing a standard of overcrowding, but used a higher number, which was 1.5, which therefore allows them to get more people per room and, there-

fore, have less overcrowded units - at least statistically.

We also noted that while they recognized that they had some substandard single family units, they did not make any suggestions in their Housing Assistance Plan for treatment with dealing with those substandard single family units.

In terms of the persons expected to reside, they again would look only to a waiting list or applicant pool of non-residents for their public housing and did not base, as the regulations require, that expected to reside projections include those who are working and have jobs in the community.

Finally, we note that while they actually gave a housing need of approximately 473 units, their three-year-housing goal was only 164 units. And this we believe, this goal, was increased after initial review by the Area Office of the Department of Housing and Urban Development.

Q Did you make any calculations from census data as to the number of persons currently residing in East Hartford who today, or at the time of this census, would have qualified for Section 8 housing assistance?

A Yes, we did. Using the 1970 census and 1970 incomes as a basis, so we were not comparing apples and oranges, and using those families who presently reside in East Hartford and earn less than $5,000 per year and pay more than 25 per cent of their income for rental housing, together with a group of families who earn between five and ten thousand dollars and

have more than five persons in their family and place more than 25 per cent of their income in rental housing, we came up with a total Section 8 eligibility of 1468 families.

Q And again the total goal as stated by East Hartford was 164 units, is that correct?

A The total goal, yes, was 164 units. The total need was only 473 units.

Q And that does not respond in any way to the persons who reside out of the community and require housing in the community, is that correct?

A That's correct.

Q Turning next to the Town of Enfield, could you first tell me where Enfield is located?

A Enfield is located equidistant between the City of Hartford and the City of Springfield, Massachusetts, north of Hartford on the Massachusetts-Connecticut state line.

Q Could you tell me whether there was readily available data concerning the population, wealth, economics, demographic data that you discussed with respect to East Hartford?

MR. EPSTEIN: Your Honor, we object again on the way the plaintiff is running through each community and again giving data that is fully documented in the administrative record, not confining the testimony to data that was missing from the administrative record.

things. I propose to restrict you to what is new.

In order to make sure that we do that, I think this witness ought to have before him a copy of the comments that he made and which he is now apparently prepared to amplify a little bit. And we will talk about the amplifications.

MR. BELLMAN: He has them before him.

THE COURT: All right. So let's not go through them all again.

Do you have the letter of comment that you sent in to HUD in connection with Enfield's application?

THE WITNESS: Yes, your Honor.

THE COURT: All right.

Do you have anything you want to add to that, by pointing out additional data that was available to HUD and claimed to be not considered?

MR. BELLMAN: Could I ask those questions, your Honor?

I understand what your Honor is saying.

BY MR. BELLMAN:

Q Was there additional -- is there additional -- was there additional data available with respect to the employment opportunities in the Town of Enfield that does not appear in your letter?

A Yes, there is and there was.

Again, it is published data by the Connecticut Department of Commerce indicating that between the period 1970 to 1974 approximately 1,664,000 square feet of additional non-residential floor space was either completed or under construction in the Town of Enfield.

Q Was there information concerning the availability of vacant land in Enfield?

A Yes, there was. Again published Regional Planning Commission data indicated that Enfield has approximately 6500 acres of remaining developable land, or approximately 30 per cent of the town land area still remains available for development.

Q Was there information available with respect to the housing characteristics of the Town of Enfield in terms of cost and type of housing?

A Yes. Again published Regional Planning Commission data indicated that the median sales price for housing in the Town of Enfield between the period November, 1973 and November, 1974 was approximately $31,415.

Q Now, was there information with respect to the characteristics, single family versus multi family?

A It is primarily a single family home owner occupied community. According to published U.S. census data, almost 80 per cent of the community is comprised of single family owner occupied homes, with a relatively low vacancy rate.

Q Did your letter make reference to major employment opportunities in the Town of Enfield?

A I do not believe so.

Let me correct that. Yes, we did - in generalities.

MR. BELLMAN: Now, your Honor, I would like to sort of put the testimony together and have him at least summarize some of the aspects of his letter.

THE COURT: I want to look at what was left out by HUD. I don't want to have to look over again what they had under the claim that they didn't have it or should have had it.

If they had it, that's one thing. What they didn't have, that's something else, as to whether they should have had it.

BY MR. BELLMAN:

Q Mr. Colman, the documents and the data you're referring to, are these common statistical documents and reports available, readily available to the planning profession?

A Yes, they are. And they're readily available to the general public.

THE COURT: He said the Connecticut Department of Commerce and the Regional Planning Commission had this data.

Q Did you reach any conclusion with respect to the adequacy of the Housing Assistance Plan submitted by the Town

of Enfield?

A Yes, we did.

Q And could you tell me what conclusions you reached with respect to that plan?

A Yes. We concluded that the Enfield Housing Assistance Plan totally ignored the requirement to deal with expected to reside. That they were providing a program which would provide for concentration rather than deconcentration --

MR. EPSTEIN: Your Honor, these are all comments that are part of the administrativa record. They all constitute opinions by these administrative bodies as to the contents of the application.

THE COURT: All right. Just a minute.

MR. BELLMAN: Your Honor, but we're presenting this witness as an expert witness on these matters. We want this record to show what his conclusions were with respect to these plans.

THE COURT: I understand.

MR. BELLMAN: And I think we should be entitled to do that.

THE COURT: The question is are these already a part of the record in what was submitted.

MR. BELLMAN: They are and they aren't, your Honor. You can't substitute a cold record --

THE COURT: At the same time you can't use the

to do is to identify anything that is new and different.

MR. BELLMAN: That's correct.

THE COURT: Right?

MR. BELLMAN: And he may give his opinin --

THE COURT: And I don't want him to build and add to what he's already got, except in that way: something additional, new and different to now further support my opinion of earlier vintage.

MR. BELLMAN: But your Honor said he may give his opinion as to the adequacy of these plans?

THE COURT: Sure.

BY MR. BELLMAN:

Q Mr. Colman, state, please, what your conclusion was with respect to the adequacy of the Enfield Housing Assistance Plan.

A We believe it was totally inadequate.

Q Could you tell me why?

A Because, as I previously indicated, they ignored any additional household expected to reside in the community. They were providing a plan which provided for concentration rather than deconcentration of subsidized housing opportunities. They were emphasizing the provision of elderly housing to the almost total disregard for family subsidized housing.

Q What number did the town of Enfield come up with

respect to additional households expected to reside in this community?

MR. ADAMS: I object. That's already in there, your Honor.

THE COURT: Sustained.

MR. BELLMAN: May the record show that the Enfield plan provided a zero with respect to expected to reside.

MR. ADAMS: Is counsel testifying?

THE COURT: Is that what it showed?

MR. BELLMAN: That's what it showed.

THE COURT: All right. That's what they've got to live with, isn't it? It is there and they acted in the face of that.

Q (By Mr. Bellman) Mr. Colman, why did you conclude that there was data available which indicated there was a need in terms of persons expected to reside in the community of Enfield?

A Because the data showed that there was a very substantial new non-residential construction, including a very large shopping center which had just recently opened in the town, and we know that that spins off a substantial amount of employment opportunities and that the people who work there should have the opportunity to live in the community in which they work.

Q What shopping center are you making reference to?

A The Enfield Square shopping center.

Q Was information readily available with respect to that shopping center?

A Yes, there was.

Q Where would that information have been located?

A Connecticut Department of Commerce.

Q You stated that the town overemphasized the need for elderly. Could you state why you reached that conclusion?

A We reached that conclusion because their Housing Assistance Program provided primarily for the elderly and not for the family.

THE COURT: He's already said that.

MR. BELLMAN: Excuse me?

THE COURT: He already said that.

MR. EPSTEIN: Your Honor, every time counsel asks the witness the basis of his opinion, that is the substance of the administrative comments in this case.

We are still not being provided with any new data that was not available. It's a rehash of the administrative record every time.

THE COURT: Well, as long as we don't take over five minutes for it, it isn't taking any more time than it is for me to have his whole comments before

sion. Yes, there will be some information repeated. It's impossible to separate it out.

THE COURT: You have a point. All right.

Let's see if we do as well with the other towns as we've done now with Enfield.

We're through with Enfield now, are we?

THE WITNESS: Are we through with Enfield?

MR. BELLMAN: One final question:

Q You stated that the town had emphasized construction which would have led to concentration within the town. Could you amplify how you reached that conclusion?

A We reached that conclusion based on their submitted HAP where they were basically doing their subsidized housing in an urban renewal area which was concentrated in one area of town and not locating housing opportunities, subsidized housing opportunities in other areas of the Town of Enfield.

Q Turning next to the Town of Farmington, could you state first where the Town of Farmington is located?

A The Town of Farmington is located west of the City of Hartford, immediately west of the Town of West Hartford.

Q Would you state the racial makeup of this town?

A The town of Farmington has a population of approximately 14,400 persons, of which only .7 per cent, or seven-tenths of one per cent, are black or Puerto Rican; non white.

Q Was there readily available information with respect

to the amount of developable land in Farmington?

A Yes, there was. Again in the published Regional Planning Commission data it indicated that there was approximately 20 per cent of the town still available for development, or approximately 3686 acres.

Q Was there information readily available with respect to the cost of housing in Farmington?

A Yes, there was. Again published Regional Planning Commission data indicating that it had one of the highest median average home sales in the entire region during the period November, '73 to November, '74. The median sales price of a house was approximately $50,150.

Q What was the median income for this town?

A The median income for this town was $12,046. Again one of the highest in the region.

Q Was there additional readily available information with respect to the employment opportunities in Farmington?

A Yes, there was. Again data published by the Connecticut Department of Commerce indicates that between the period 1970 to 1974 approximately 2,900,000 square feet of non-residential floor space was either completed or under construction.

The two major components of that floor space were the Westfarms Mall portion located in the Town of Farmington and the UConn Medical Dental School and Hospital.

Q Was there information available with respect to the character of the housing in Farmington?

THE COURT: $50,000 average cost.

MR. BELLMAN: Single family as opposed to multi family.

THE COURT: Oh.

All single family, isn't it?

THE WITNESS: Almost three-quarters of the housing in Farmington is single family, owner occupied, with a relatively low vacancy rate.

Q How much money did the Town of Farmington apply for?

A The Town of Farmington applied for $154,000.

Q And how were they proposing to use that money?

A They proposed to use that money to assist in the local share for sewer construction in the Lake Garda area of Farmington.

Q In other words, all their money was for that purpose?

A That is correct.

Q Did you reach any conclusion --

THE COURT: That's an area of residential housing, isn't it?

THE WITNESS: Yes, it is, your Honor. On smaller lots. Smaller homes.

THE COURT: Yes.

That would be more moderate income housing?

THE WITNESS: That is possible.

Q (By Mr. Bellman) Did you reach any conclusions with respect to the adequacy of the Housing Assistance Plan that Farmington submitted?

A Yes, we did. We reached the conclusion that it was inadequate and inconsistent with the available data.

THE COURT: Now, just a minute.

BY THE COURT:

Q What were they supposed to do with $154,000 to provide adequate minimum or moderate income housing? That's $154,000. Are you supposed to build four, or five, or six houses or --

A Not necessarily, your Honor. First of all, the $154,000 is the first year money. Over a five year period there will be additional funds forthcoming to the community.

Q Now, what were the sewers for?

A The sewers were to assist in putting in a trunk sewer for the Lake Garda area.

Q And the Lake Garda area needs a trunk sewer in order to carry waste from where?

A Land that they want to have developed.

Q And how do they want to develop it? For what purpose?

A I do not know, your Honor. I presume residential development.

Q Then isn't this all related to future assistance in

administrative comments questioned the use of the funds or the community development plans and activities which were proposed in the application. So that was included among the objections to the application.

THE COURT: Now I want to ask the witness a question:

Q You believe that their planning was inadequate, is that it?

A Their Housing Assistance Plan.

Q That was inadequate?

A Yes, your Honor.

Q They should have asked for more money to build more sewers to take care of more houses?

What do you mean by "inadequate"?

A That they did not address what we believe are the real housing needs in the Town of Farmington and the role that the Town of Farmington should play in the housing needs of the region, particularly when they have a major employment center opening up and we know there will be families working there who require housing assistance who would like to reside in the Town of Farmington, and they do not address that need at all.

Q All right. Now, to the extent to which they sought government funds, $154,000, was that in excess of what was

needed for what they planned?

A That formed a part of the local share. There were substantially other funds that were going into that sewer construction project. I cannot speak to the specifics unless I refer to their plan.

Q But you just say they weren't planning on a big enough scope to comply with the Act, is that it?

A In terms of their Housing Assistance Plan; not in terms of their block grant application of which the Housing Assistance Plan is a part of.

THE COURT: All right.

Next case.

BY MR. BELLMAN:

Q Did their application, their Housing Assistance Plan, make any statements with respect to people expected to reside in the community?

A Yes, it did.

Q Could you read me that statement, please?

A As a footnote to their Table 2, which is their housing assistance needs of lower income households, Footnote 17 of the Town of Farmington indicated that given existing economics it is assumed that no additional families needing assistance will move into Farmington.

Q Now, is that statement plainly consistent with readily available data?

A I do not believe so.

THE COURT: Why not?

THE WITNESS: Because, your Honor, with the opening of the medical dental school and the Westfarms Mall, with the employment opportunities that are offered there, it is my opinion that additional families who would qualify for assistance would like to move and reside in the Town of Farmington.

THE COURT: All right.

Q (By Mr. Bellman) Now with respect to the 75 units that the town did find as a housing need, on what basis did the town make that judgment?

A They based it primarily on waiting lists.

Q This would be public housing waiting lists?

A For public housing.

Q Turning next to the Town of Glastonbury --

THE COURT: Well, the waiting list is one valid indicator of need, isn't it?

THE WITNESS: Yes.

THE COURT: It's just one.

THE WITNESS: Just one.

THE COURT: There are others, yes.

THE WITNESS: We believe there are more.

BY MR. BELLMAN:

Q Isn't it artificially low criteria for judging housing need, Mr. Colman?

A We believe so. In terms of judging overall housing need it is artificially low because of the artificial constraints and eligibility requirements that are attached to such a waiting list.

Q Where is the Town of Glastonbury located?

A The Town of Glastonbury is located southeast of the City of Hartford, on the east side of the Connecticut River, immediately south of the Town of East Hartford.

Q Was there readily available information with respect to the population, racial makeup and economics of Glastonbury?

A Yes. There was published U.S. census data and Regional Planning Commission data.

Q What did they show?

A They showed that the total population of Glastonbury was approximately 20,600 persons, that only seven-tenths of one per cent of the population was non-white, that the median family income was the highest of the towns we looked at of $13,198, that the median sales price for housing between November, '73 and November, '74 was $46,780.

That it had, in terms of quantity, the largest developable acreage, 8560 acres, or approximately 25 per cent of the town. And Glastonbury is one of the largest towns in the state in terms of area. That over 75 per cent of the

homes were single family owner-occupied, and that it had an extremely low vacancy rate of .3 per cent.

Q Was there readily available data with respect to employment opportunities in Glastonbury?

A Yes. Again published data by the Connecticut Department of Commerce indicated that in the period between 1970 and 1974 approximately 387,000 square feet of non-residential floor space was either completed or under construction, including two shopping malls.

THE COURT: How many square feet?

THE WITNESS: 386,800, your Honor.

THE COURT: And this was a shopping center?

THE WITNESS: Some of it was in two shopping centers: Fox Run Mall and Glen Lochen.

Q (By Mr. Bellman) Did the Town of Glastonbury state as one of its long term goals the expanding of job opportunities?

A Yes, they did.

Q That appears in their application?

A Yes, it does.

Q Now, how many additional households did the Town of Glastonbury state it expected to reside in its community?

A Zero.

Q It's true, is it not, that the Glastonbury application in fact gave some information responsive to calculating

number of persons expected to reside; isn't that correct?

A It's interesting that the Town of Glastonbury did make an attempt to calculate the number of persons who work in the community and had expressed an interest in residing in the Town of Glastonbury and also might be eligible for federal housing assistance.

But all they did was recognize this. They did not reflect, for some reason, this perceived need in their Housing Assistance Plan at all.

Q How many persons did the Town of Glastonbury list in the category working in the town, living outside the town and qualifying for Section 8 housing?

A 806 persons.

BY THE COURT:

Q They did figure that there would be 806?

A Yes. The town did an interview and went through a statistical process and actually came up with that number themselves.

Q 866?

A 806 persons who worked in town had expressed an interest in living in Glastonbury and were eligible for Section 8 housing.

Q They had the information, anyway.

A Yes, sir. The information was readily available to the town.

Q And they included it?

A They included it in terms of discussing it. But they did not include it in their statement of needs or people expected to reside, which we found very interesting - and disappointing.

MR. BELLMAN: Your figure in that category was zero, is that correct?

THE WITNESS: That's correct.

Q (By the Court) I imagine they're quite ashamed of themselves over there to have so many people interested and still not judged that they can't expect any of them. They must have some other reason for not expecting them to want to go there.

A I can't comment on that, your Honor.

Q No. Not if we just rely upon statistics and what we might think people ought to be doing about where they want to live.

But it is interesting, just the same, that the town fathers have this in front of them and then say we don't expect any of these people to want to come here.

A Or to provide provisions to assist them in coming.

Q Well, if they don't expect them, I don't know.

A I would defer to you, your Honor.

Q Well, it's kind of curious.

By the way, how much did they apply for and for what

were they going to use the money?

A The town applied for a total, your Honor, of $910,000. They propose to use $65,000, a little over 7 per cent, for housing; $500,000, or almost 55 per cent, for their urban renewal project; $130,000, or approximately 14 per cent, for public improvements; $115,000, almost 13 per cent, for recreation; $50,000 for planning and management administration and $50,000 for historic preservation.

BY MR. BELLMAN:

Q Just so the record is clear, Mr. Colman, when you say "using certain monies for housing," that doesn't mean housing construction, does it?

A No, it does not.

MR. BELLMAN: The community development funds, your Honor, are not available for the actual construction of housing. It can be used for planning and other related aspects. It's Section 8.

THE COURT: Like a sanitary sewer or something.

MR. BELLMAN: It could be.

THE COURT: Or laying out new roads, or putting in sidewalks, or a regional fire station.

MR. BELLMAN: It could be.

Q (By Mr. Bellman) Turning next to the Town of Vernon, could you state where Vernon is located?

THE COURT: I think we will go into Vernon

miles from Hartford?

A About 15 miles from Hartford.

Q And it's how big?

A It has a population, your Honor, of approximately 27,000, including the Town of Rockville.

Q And in area?

A I don't know its total area.

Q Do you know how many new residences were built there in the last ten years?

A Not the exact number, no sir.

Q Do you know how many have been built there in the last five?

A No. But I can tell you how much non-residential construction was built in --

Q Well, do you know how may residential have been built in the last five?

A Not off the top of my head, no sir.

Q Doesn't that have some relevance to the amount of non-residential construction there?

A Yes, it does, your Honor.

Q You didn't furnish that information?

A We furnished information on construction between 1960 and 1970, all readily available in the published U.S. census table.

THE COURT: All right. I guess we'll have to

go ahead.

Tell us what you didn't comment on.

BY MR. BELLMAN:

Q Did you provide data in the document with respect -- in your comments with respect to the population or racial characteristics of the Town of Vernon?

A Yes, we did.

Q Just to expedite this, could you tell me the population and the racial makeup?

A Vernon's population in 1974 was 28,700, of which .9 per cent were non-white.

Q And what was the economic makeup of the population?

A In 1972 the median income of the population was $12,338, and approximately 27 per cent of the population earned in excess of $15,000.

Q Tell me about the information with respect to the housing characteristics in Vernon.

A The average house in Vernon sold between the period November, 1973 and 1974 for approximately $41,177.

Q Where was that information available?

A That information was available from the Regional Planning Commission.

In addition, approximately 58 per cent of the homes in Vernon are owner-occupied, single family.

Q Was there information available with respect to the

amount of developable land?

A Yes. Again from the Regional Planning Commission published data indicate that approximately 10 per cent of the town was still available for development of around 1184 acres.

Q What data was available with respect to economic opportunities in the Town of Vernon?

A Published data by the Connecticut Department of Commerce indicated that between the period 1970 and 1974 approximately 219,500 square feet of non-residential floor space was either completed or under construction in the town.

THE COURT: During what years?

THE WITNESS: 1970 through 1974.

THE COURT: And for that period you don't have the comparable figure of the number of square feet of residential housing?

THE WITNESS: I do not have it with me, no, your Honor.

THE COURT: Okay.

Q (By Mr. Bellman) Was there any information available with respect to the amount of subsidized housing in the Town of Vernon?

A Yes, there was. The United States Census 1970 indicated that the town had 228 substandard housing units and 917 households which paid more than 25 per cent of their income for shelter costs.

Q What about subsidized units?

A I do not have any specific data on that. There is data available, though.

Q Okay. You reviewed the Housing Assistance Plan of Vernon, is that correct?

A We reviewed a draft of the Housing Assistance Plan for the Town of Vernon because all that was available at the time we made our review was a document marked, "Draft Housing Assistance Plan."

Q So your A-95 review comments were addressed to what was labeled a draft plan?

A That is correct.

Q Now, did you reach any conclusions with respect to the adequacy of that plan?

A Yes, we did. We first were puzzled that it was only a draft.

Secondly, we do not believe that they addressed the needs adequately, nor that they addressed the directives concerning persons expected to reside in the community.

Q Now, with respect to needs of the population, what problems did you find with respect to their estimations?

A We noted that the town identified 332 elderly households on a public housing waiting list, as well as 415 low and moderate income persons on a waiting list; and yet the overall need that they showed was only 415 and did not reflect

the other 332.

THE COURT: How do you know it wasn't a duplicate? How do you know that the 415 didn't include the 332?

THE WITNESS: Because they separated them out between elderly and family, your Honor.

THE COURT: 332, that was on the elderly?

THE WITNESS: That was on the dlerly. 415 --

THE COURT: You call that an overall waiting list?

MR. BELLMAN: I think the application is clear on that, your Honor, that they were separate and that they had a total need of over 700.

THE COURT: All right.

Q (By Mr. Bellman) How many units did the town set as its goal in response to that need?

A They set a first year goal of 55 units.

Q Did they give any goal with respect to the following years?

A They did not. And they indicated on their three year goals that it was, quote: "Optional," unquote.

Q Did the town give any statement as to needs with respect to persons expected to reside in the community?

A No, they did not.

Q Did they give any figure?

A They gave a zero figure for expected to reside.

THE COURT: They had the same kind of a hangup that Glastonbury had that way?

THE WITNESS: To a degree, yes, your Honor.

Q Now turning to West Hartford, please state where West Hartford is located?

A West Hartford is immediately west and adjacent to the City of Hartford.

Q Was there readily available data with respect to the population, racial makeup and economics of this community?

A Yes, there was published U.S. Census data and Regional Planning Commission data indicating that the 1970 population of West Hartford was approximately 68,000 persons, of which seven-tenths of one per cent were non-white.

That the median family income in West Hartford was almost $13,000, that the median sales price for housing between the period November, '73 and November, '74 was approximately $50,490.

That the town had almost 75 per cent single family owner-occupied housing, with a relatively low vacancy rate, and that they had a very small percentage of developable land remaining in the community.

Q Was there any information readily available with respect to employment opportunities in West Hartford?

A Yes. Published data by the Connecticut Department

of Commerce indicated that between the period 1970 to 1974 approximately 1,383,000 square feet of non-residential floor space was completed or under construction in the Town of West Hartford.

Q Was there any further breakout of that floor space figure?

A The major component of that floor space was the portion of the Westfarms Mall located in West Hartford and a new corporate office building.

Q Was there any information readily available with respect to the number of Hartford residents who reside in Hartford and work in West Hartford?

A Yes. The Connecticut Department of Labor, 1972 published data indicated that approximately 6980 Hartford residents work in the Town of West Hartford.

Q Turning next to the Housing Assistance Plan filed by West Hartford, did you reach any conclusions with respect to the adequacy of that plan?

A Yes, we did.

Q Could you tell me what those conclusions were?

A We believe that the plan was plainly inappropriate and inconsistent with readily available data, that the goals developed by the town did not meet their stated needs, and that there was an emphasis on elderly housing vis-a-vis family housing.

Q What did the town state as its needs and goals, in terms of numbers?

A The town gave a stated need of 1011 units and gave a first year goal of 230 units, and gave a three year goal of zero units. And that they only dealt with -- they only provided first year goal and did not deal at all with further goals to meet their own identified need of over a thousand units.

Q Did the Town of West Hartford provide any figure as to numbers of persons expected to reside in the community?

A The Town of West Hartford indicated a zero for those expected to reside.

Q Now, you stated that they overemphasized elderly. Would you explain that further?

A The programs that they were dealing with, they were mainly providing subsidized assistance to elderly.

For example, their needs, although they have a big breakout for other, they have identified 200 elderly needs and 76 large family needs. Then they lump 735 in other. In terms of their assistance, their first year goal is for 140 elderly and only 20 large family.

Q Turning to the last community, Windsor Locks, please state where that's located.

A Windsor Locks is located North of the city, approximately 10 to 15 miles, adjacent to the Bradley International

Airport.

Q Again could you give me the data with respect to population, race and wealth?

A According to published 1970 U.S. Census data and Regional Planning Commission data, in 1970 Windsor Locks had a population of approximately 15,000 persons, of which 1.2 per cent were non-white, and had a median family income of approximately $11,750.

Between the period of November, '73 and November, '74 the median sales price for housing was $33,180. Three-quarters of the housing units are owner-occupied single family units and the town has approximately 15 per cent remaining developable acreage, or about 920 acres.

Q And again where did the information come from with respect to housing characteristics and developable land?

A From published Regional Planning Commission data.

Q Was there any information available with respect to employment opportunities in Windsor Locks?

A Yes. Data published by the Connecticut Department of Commerce indicates that between the period 1970 through 1974 approximately 665,700 square feet of non-residential floor space was either completed or under construction in the Town of Windsor Locks.

Q Are there some major employment centers in Windsor Locks?

A Bradley International Airport and the supportive uses related to the airport and its activities are located, in part, in Windsor Locks.

Q Are these major employers?

A In my opinion, they are.

Q Now, did the Town of Windsor Locks provide a figure as to the number of expected persons to reside in that community?

A Yes, they did. They provided a figure of zero of those expected to reside in the community.

Q It's true, is it not, that on Page 3 of the application the town made some statement with respect to that problem, is that correct?

A Yes. They made a statement to the effect - and I quote:

"No new planned employment opportunities which would result in an increase in lower income households is expected to reside in the community."

Q Did you reach any general conclusion with respect to the Housing Assistance Plans submitted by Windsor Locks?

A Yes, we do. We think that they totally ignored the directive concerning expected to reside, in view of the expansion taking place both at Bradley International and the existing industries which they have in the community, including United Aircraft and Hamilton Standard.

We think that they also underestimated the need of residents presently existing and living in the community in that we did a simple analysis of the 1970 Census data, which indicated that almost 200 families presently residing in Windsor Locks would be eligible for Section 8 assistance; whereas the town only indicates a total need for housing of 117 families.

Q It's true also that Windsor Locks used the lower overcrowding figure, is that correct?

A Yes. They, as did East Hartford, used an overcrowding figure which substantially reduced what is normally considered to be overcrowding.

Q Now, Mr. Colman, I'd like to ask you generally will, in your opinion, any of the Housing Assistance Plans submitted by these seven applicant communities lead to deconcentration of lower cost housing and deconcentration of low income people, minority people from the inner city of Hartford?

A I do not believe they will.

Q In your opinion, will any of these plans lead to added job opportunities for low income and minority residents of Hartford and the suburban areas?

A No, sir.

MR. BELLMAN: We have no further questions, your Honor.

saying that we have to consider the regional needs, the spatial deconcentration of minorities, and so forth.

Isn't it true that the only requirement in the Housing Assistance Plan to reflect this deconcentration, i.e. a change from the status quo on racial demographic data would be the expected to reside segment of Table 2 of the HAP, is that correct?

A Primarily.

Q All right. Now, with respect to that expected to reside figure, what does the data relating to the 1970 minority population of a given community tell you about the expected to reside figure? Does it tell you anything?

A It tells me that the communities want to maintain their status quo, which is basically a segregated situation locking out the low and moderate minority families because they show zero and they've already got 1.2.

Q Wait a minute now.

A That's what it shows me.

Q It shows you that there's a certain pattern of housing. It doesn't tell you anything about the intent of a particular community, does it?

A Sure it does. It tells me that they don't expect anyone to reside in their community other than those that are residing there now. Which means they want to maintain the present pattern.

Q I don't understand, Mr. Colman, why the census data which tells you what --

Couldn't it be a matter of choice of the individual people, that they didn't care to live in Enfield or in Farmington?

A That's not the question at hand. The census data tells me what exists there now. The HAP --

Q 1970.

A Right. And the HAP tells me what they propose to do. And when they propose to do zero it tells me that they want to maintain what they have there now.

Q No. They may be reflecting the desires of the individual people involved. People don't want to live there nd they don't provide for them.

A I doubt that very much.

Q Okay.

A Particularly with the employment opportunities, it's well known that people like to live as close to their job as possible.

Q We'll get to the employment opportunities in a minute.

Let's go to the median income of the community. What does that represent statistically? That represents the income. Half the incomes are above it and half of the communities are below it?

moderate income, as well as elderly housing."

Is that inconsistent with your position?

A To a certain degree, of course it is.

Q Okay.

A But I think it's important to note that.

Q Based on --

MR. BELLMAN: Excuse me.

Would you please let him answer the question?

MR. vomEIGHEN: I thought he had finished.

THE WITNESS: I was just --

THE COURT: Well, he finished. He said it was inconsistent with his own.

MR. BELLMAN: He started to explain something, your Honor.

THE COURT: Well, he wasn't asked to give an explanation.

MR. vomEIGHEN: I asked him whether it was inconsistent.

BY MR. vomEIGHEN:

Q So the C.R.O.G. said that Farmington's attempt was creative. And you said that it wasn't, and that it was inadequate.

Now, given the standard of review under the Housing Community Development Act of 1974, that is that the data submitted has to indicate that the application and data is

plainly inappropriate and plainly inconsistent, would you believe that the Area Director should have found that the issue was conclusive or plainly inappropriate?

A I do, because the Regional Planning Commission commented on only a portion of the HAP in that the town had a creative approach to its statistics in determining existing need of those residing in the community.

That's only part of the problem. They did not address at all the problem of those expected to reside in the community.

Q You've already stated, Mr. Colman, that you don't have any data that indicates the commuting patterns to these communities like Farmington.

A I don't think you need that kind of data to know that when a two million square foot retail shopping space and a medical dental center employing a thousand people is opening up, that there are going to be some people residing in the town.

Q Okay. Do you know what their income is based on, that data alone?

A I don't know off the top of my head, but I can sure find out.

Q You can find out. Is it generally available information?

A It sure is.

stated on the administrative record.

THE COURT: All right.

BY MR. EPSTEIN:

Q Did you include in your administrative submission substitute figures for that contained in the applications?

For example, you complain about the zero expected to reside. Did you produce substitute expected to reside figures in place of those on the application?

A Not at that time, no.

Q No. Well, then on what basis did you expect HUD to adopt your theory?

A On the basis of readily available and published data.

Q I'm talking about based on your administrative submission.

A Our administrative submission included substantial documentation of readily available data. We sent over a whole package of work sheets on census data, which we would have hoped the Department of Housing and Urban Development might have used in assessing those HAPS.

Q Well, statistical data is subject to different inferences, correct?

A Not straight addition and subtraction, I don't believe.

Q Well, I'm talking about on substitute figures.

of comments and review by others in the City of Hartford?

A Yes, sir.

THE COURT: I'm just trying to find out what happened here.

MR. ADAMS: That's all right. So am I.

BY MR. ADAMS:

Q On the day that the Enfield application was first made then, I gather that you had already seen the application and you and a number of people in your staff had reviewed it. I believe that's summarizing, but I guess that's correct, isn't that --

A At the time that the Regional Planning Ad Hoc Committee started their discussions on the Enfield application we had had an opportunity to review the application.

Q Do you recall how many and who represented the Town of Enfield at that time?

THE COURT: Where?

Q The ad hoc committee, this first time that Enfield appeared in support of its application.

A I recollect that there were certain members of the staff of the Town of Enfield.

Q Do you recall specifically anybody in particular?

A Not by name.

Q Well, you know Mr. Donald Ball, don't you?

A Yes, I do.

City of Hartford?

A Yes, I did.

Q And do you recall whether or not you asked any questions of the representative from Enfield?

A I'm sure I did.

Q And did you give any opinions concerning the application at that time?

A I believe I did.

Q Do you recall what opinions you gave at that time?

A Not specifically, no, I don't. But I believe that they pretty much paralleled the comments that were submitted in writing by the city's Economic Research and Development Committee.

Q So that the comments which you made public at that meeting were later submitted in writing by the City of Hartford to the committee, is that correct?

A Generally.

Q Did that include the discussion of Enfield's projected growth in housing?

A I do not recall that discussion.

Q You do not recall? Well, that's included in the written comments, isn't it?

A We refer to that.

Q You did refer to that?

A Yes, in the written comments.

A No, I do not.

Q Do you know if any of them reside in Hartford?

A No, I do not.

Q Now, in addition, under the Section 8 Housing Assistance Program do you know how many units are available for application under this program?

A I do not know the exact number, no.

Q Do you know whether or not the maximum number of units have been utilized under a Section 8 program or assigned?

A I know that the maximum number of units have been applied for. I do not know of the maximum number of units that have been assigned. It's my understanding that they're still receiving potential requests from developers and public housing agencies.

Q Do you know whether or not the Housing Assistance Plans of the various communities that you have commented negatively on take into account the Section 8 housing availability?

A In some instances I think some of them do. But I think that's only part of the Housing Assistance Plan.

Q Now, with respect to the Town of Glastonbury, Mr. Colman, are you familiar with the Town of Glastonbury?

A Generally.

Q When you say "generally," have you passed through it several times, or have you lived there, or --

A I've passed through it. I also, when I was not employed by the City, assisted the Town of Glastonbury in a revision of their zoning regulations.

Q You assisted the Town of Glastonbury in a revision of their zoning regulations?

A That is correct.

Q So you had a hand in the development of the current zoning regulations of the Town of Glastonbury?

A To a degree.

Q You were part of a staff?

A I was a consultant to the Town Planner's Office and the Town Manager's Office.

Q I see. And are you familiar with Glastonbury's "village center concept"?

A In general.

Q In general. Well, do you know anything about the growth rate of the Town of Glastonbury?

A Based on census data.

Q Based on census data.

That's the same census data that was used in the preparation of Glastonbury's application, is that correct?

A I would hope so.

Q Well, you reviewed Glastonbury's application. Do you know so?

A I believe it was.

THE COURT: And your point is that the 74 per cent that you have channeled -- is that right?

MR. TWACHTMAN: Yes, your Honor.

THE COURT: -- is specifically authorized and in compliance with the urban renewal program?

MR. TWACHTMAN: Your Honor, there's no question that it's authorized. The Act clearly states that this Act is available to consolidate a number of federal programs, including urban renewal, and to provide additional monies for the completion of those projects.

THE COURT: All right.

I'm sorry. I mean I interrupted the course of your cross-examination on this question.

Do you want to put the question to Mr. Colman?

MR. TWACHTMAN: I don't know whether there was a question pending.

THE COURT: Well, I think the question was were you aware of the fact or did you take into account the fact that a substantial amount of Glastonbury's application was for the completion of an urban renewal program which had already been approved?

THE WITNESS: We took that specifically into account, your Honor, and --

THE COURT: Well, having taken it into account, did you give a weight, a percentage weight to that item?

THE WITNESS: We commented upon the fact that they intended to do that and further commented that we were concerned that in completing their project, which was basically a non-residential project which is going to have additional non-residential construction which in turn could be translated into job opportunities in the community, they did not reflect in the Housing Assistance Plan the fact that they were completing this project and the employment opportunities and consequent housing opportunities that could be related thereto.

So we addressed the matter specifically in our comments and review.

THE COURT: If I understand you correctly, you had commented on it as if it were in the same category as new non-residential construction, is that it?

THE WITNESS: In part, yes, your Honor.

THE COURT: What?

THE WITNESS: In part, yes.

THE COURT: The fact that they had this program would, itself, probably create --

Q And yet with all this non-residential construction Hartford was able to say that they expected a zero expected to reside. Are there other factors that go into a determination of whether or not the zero figure is an absolute norm; that if you build so much non-residential construction that you're just going to have so many people reside?

A Certainly there's other indications, and that's exactly why the City of Hartford reflected a zero - because we, unlike the suburbs, are experiencing and have experienced a decline in the population, an out migration of job opportunities, out migration of industrial growth --

Q Well, Mr. Colman, what I'm saying is is that when you have been giving his Honor and you have been saying that this was material that was readily available that was significant, that it isn't necessarily significant by itself - there are other factors that must be considered, are there not?

A There are. And we are suggesting that they ought to be considered.

Q That's my question, that there are other figures; that that alone is not the only thing in which a judgment is based on how many people are expected to reside.

A It's a portion.

Q All right. Now, there's 6900 people, I believe you say, that live in Hartford that work in West Hartford, is that correct?

THE COURT: 6980 in Hartford work in West Hartford.

A That's correct.

Q Right. How many people from West Hartford work in Hartford?

A I do not have that number.

Q Do you think it's 6900?

A I haven't got it.

Q Do you think it is significant that you should have known this when you were making your own HAP application?

A It's a number that we should consider.

Q Well, is it a number that West Hartford might consider as far as a balance, if we have 6900 people working in West Hartford that reside elsewhere, that we may also have people that live in West Hartford that work elsewhere that may desire to reside there, by your figures that if you work someplace there's a natural desire to reside in that place?

A That is true. But I would dare say that those people coming from West Hartford to Hartford do not qualify for housing assistance.

Q Well, what I'm saying is that you use these figures as being somehow absolute norms, and then we turn around and find out that they're subject to modification and interpretation.

The 6900 people, Mr. Colman, that work in West Hart-

all of it was in front of HUD when they made their decision and nothing that you said is new, is it?

A Well, we did make some comments concerning the non-residential development that has taken place.

Q But substantially everything you said is repetitive of the record?

A A number of the things we have said are contained in the record.

MR. WARD: I make the same motion as my brothers have made.

THE COURT: Same ruling: denied.

MR. BELLMAN: Your Honor, I just have a very few.

THE CLERK: I think that Farmington is the only town that has not responded by cross-examination. But there doesn't appear to be anyone from Farmington here.

THE COURT: Is Farmington a party here?

THE CLERK: Yes, Farmington is a party.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. BELLMAN:

Q Mr. Colman, I'd like to turn, first, to the issue of Hartford having listed a zero expected to reside figure on its application. Would you explain for the Court why

Hartford gave that figure?

A We gave that figure because our review of the development patterns and trends that were existing and projected for the city, unlike the suburbs we have experienced a substantial reduction in our overall population. We have a declining population, while the rest of the region has an increasing population.

We have had a substantial loss of manufacturing employment, whereas the rest of the region has had an increase in such employment.

We've had a reduction in overall housing stock and a very limited increase in new residential opportunities, unlike the suburbs which have experienced increases in their overall residential stock.

We also reflected the fact that the city already houses an overwhelming proportion of the subsidized housing units in the region, particularly public housing, and the fact that we have a very substantial and very significant existing housing need in the city of 10,000 or more units, which we must address initially as our paramount and immediate housing problem.

Q So the City of Hartford's Housing Assistance Plan, while giving a zero figure for expected to reside, gave a relatively high figure as to housing need of its own residents, is that correct?

A We gave a very substantial housing need figure.

Q And isn't it true that the City of Hartford has sought, through its application, to obtain as much money as possible to assist its own residents in providing decent housing?

A Yes, we have, as well as setting aside additional funds in the block grant in addition to possible availability of Section 8 monies to additional programs to assist in meeting our housing need.

Q So is it your opinion, Mr. Colman, that the zero figure in terms of expected to reside is a fair figure as to the City of Hartford?

A Not only fair, but realistic.

Q Is the zero figure that was given for the suburbs -- I take it in six of the cases, or all of the cases zero - were those fair figures, in your estimation?

A We do not believe they were fair figures.

Q Mr. Colman, there was a substantial amount of inquiry by the various attorneys for the towns concerning details of development within their specific towns. I would like you to tell the Court again what was the role that the city played with respect to the A-95 comments and the comments that you forwarded to HUD?

A The role we played was one of a reviewer in accordance with the A-95 and community development block grant regu-

P A U L D A V I D O F F, called as a witness, being first duly sworn, was examined, and testified as follows:

THE CLERK: Would you state your name for the Court?

THE WITNESS: Paul Davidoff, D-a-v-i-d-o-f-f.

THE CLERK: And your address, Mr. Davidoff?

THE WITNESS: 18 Forest Park Avenue, Larchmont, New York.

DIRECT EXAMINATION

BY MR. BELLMAN:

Q Mr. Davidoff, what is your profession?

A I'm an urban planner.

Q Where are you employed?

A I am employed by the Suburban Action Institute of New York.

Q Could you state quickly your educational background?

A I've been educated as both an urban planner, receiving a Master's degree in Urban Planning and an LLB from the University of Pennsylvania.

THE COURT: What's this outfit, Suburban Action what?

THE WITNESS: The Suburban Action Institute.

THE COURT: "Institut."

Q Would you please state your work experience.

A Very briefly, upon receipt of my Master's degree in Planning I was employed as the Town Planner in New Canaan, Connecticut.

Thereafter I worked on the writing of the Residential Provisions of the New Zoning Ordinance for New York City.

In 1958 I joined the faculty of the Department of City Planning at the University of Pennsylvania, remained there in professorial levels until 1965.

In 1965 I was asked to create a new department, a Graduate Department of Urban Planning at Hunter College at the City University of New York. I stayed there until 1969, at which point I created the Suburban Action Institute.

Q And could you tell the Court what the Suburban Action Institute is?

A Suburban Action is a non-profit organization that was created for the purpose of seeking to educate the public as to the values that would be gained in solving basic national problems of discrimination, poverty and lack of opportunity by altering American urban growth policies in such a way that the suburbs would make a significant contribution towards a solution of the problems.

Q Mr. Davidoff, are you involved in any professional organizations in the field of planning?

A Yes. I've been a member of the American Institute of Planners.

Q Have you held any office with that organization?

A I was a member of the Board of Governors for three years just a year or two ago.

Q And have you written in the field of urban planning and suburban growth?

A I've written a large number of articles in the area of planning and urban growth.

Q Have these articles focused on the question of suburban housing practices?

A Yes, a large number of the articles and studies that I have done have related very directly to this issue.

Q Have you, in your professional career, worked with any national commissions on these problems?

A Yes, I have.

Q Could you state which commissions?

A Yes. I've had experience writing sections of reports for the Kaiser Commission, the President's Commission on Urban Housing Problems, for the Douglass Commission heading up a research project carried out at Hunter College for that report, examining the effects of zoning practices on opportunities of low and moderate income families.

I have conducted studies for the United States Commission on Civil Rights - one dealing on the feasibility of establishing educational parks in metropolitan areas as a way of resolving issues of metropolitan school segregation;

and a second one examining the consequences of the move of a federal facility, the National Bureau of Standards, from downtown Washington to a suburban community, Gaithersburg, Maryland on opportunities for housing for the minority employees for the National Bureau of Standards.

Q What was the Douglass Commission?

A The Douglass Commission was the President's Commission on Urban Problems.

Q Has the Suburban Action Institute worked with any federal agencies with respect to these problems?

A Yes, we have. We are just now completing a study for the National Endowment for the Arts - a study dealing with how to design new forms of community, mixed income communities that contain housing for many different income groups and racial groups at the periphery of the metropolitan growth in areas where there is ample room for new development.

Q And are you in charge of that study?

A Yes, I am.

Q Have you worked with any state governments on these questions?

A Yes. The Commonwealth of Pennsylvania's Department of Community Affairs asked us to examine practices in suburban communities throughout the state. The Department withheld state recreational dollars from those communities found to be exclusionary.

Q Finally, have you worked with any international bodies on this question of housing opportunities?

A I have. I was one of the two United States representatives, one along with Margaret Mead, to a Swedish conference, United Nations Conference, held in Stockholm a few years ago on the subject matter of fostering residential integration.

More recently, I have been working as head of the Subcommittee of the North American Non-Governments Concerned With Environment in Planning for the International Conference on Human Settlements, to be held in Vancouver next year.

Q Have you had the opportunity to acquaint yourself with various HUD programs in the field of housing and urban development?

A I have, from the very beginning of my studies of urban affairs, been particularly concerned with the practices of HUD in relation to urban development policy.

Q Have you had an opportunity to focus on the issue of federal funding practices?

A I have.

Q By federal agencies and HUD?

A I have.

Q And in what context?

A Particularly during my work with Suburban Action I have been concerned with the examination of the affirmative

action of the Department of Housing and Urban Development in its funding of different programs under the different programs that have been in existence since that time.

Suburban Action has been tremendously concerned that the Department of Housing and Urban Development has, over the years, been funding many communities that are enlarging patterns of segregation in metropolitan areas, in direct violation of mandates of the Civil Rights Act of '64 and '68.

We were instrumental and our counsel, Mr. Bellman, has played a very key role in a challenge to the right of HUD to grant funds to one of the most exclusionary communities in Westchester County, Newcastle, under the old categorical grant programs. This case is presently before the Second Circuit.

Q Have you had any experience with the housing problems in the Hartford area?

A I have. As a town planner in New Canaan I was active in the work of the American Institute of Planners Chapter here in Connecticut, and subsequent to that time I have been called on by different groups here in Hartford to assist them in preparation of materials.

I have been called on by lawyers involved in the Lumpkin vs. Peekskill case to begin examination of the zoning materials of the communities in the Hartford region, to

examine their effect on the movement of population in this region.

I've also participated in other studies that have been called on by groups such as Education Instruccion in this area, which has been examining the general movement of population and the rights and opportunities of minorities in this region.

Q It is true, is it not, that you were also involved with a group called the Connecticut Coalition for --

A Open Suburbs.

Q Open Suburbs?

A Yes. Suburban Action was instrumental in creating an act of coalition here in Connecticut that is working to foster greater opportunities for minority residents.

Q Could you tell me what the relationship of Suburban Action Institute was or is to the City of Hartford, with respect to the Housing and Community Development Act of 1974.

MR. ADAMS: Your Honor, I'm going to object.

I haven't heard a question yet that's referable to new information which supposedly was available to HUD or to the towns which wasn't used.

I am interested in all this background, but I don't see that it is relevant at all.

MR. EPSTEIN: Your Honor, may I point out, as I did yesterday, that the witness participated in

questions.

THE COURT: All right. Put your two more questions. Go ahead.

Q The question was the relationship of the City of Hartford --

A Aware of Suburban Action's keen concern with issues of opportunities for minorities in metropolitan development and of our concern for the practices of HUD in granting support to communities in the suburbs, the City of Hartford employed Suburban Action earlier this year to commence an in depth review of the applications made by the surrounding suburbs in the Hartford region to assist the City of Hartford in making its A-95 comments. And that is what we have done.

Q Are you personally familiar with the 1974 law, the various regulations and memoranda that have been promulgated by HUD and its officials with respect to that law?

A I am.

Q All right. Mr. Davidoff, yesterday and today we've heard a substantial amount of testimony with respect to the Housing Assistance Plans that were filed pursuant to the requirements of the 1974 Act and the role these plans are to play with respect to community development grants.

I would like to ask you, based on your experience in this area, what is the purpose and importance of the Housing Assistance Plan?

A Mr. Bellman, the Housing Assistance Plan, I believe, is the keystone to the new Act. It is the essential ingredient of this Act which makes possible the realization of the highly innovative features of the Act. And let me be specific:

The HAPS, Housing Assistance Plans, are the glue that binds together the housing programs in the community development programs. They are the essential ingredient that makes possible a comprehensive plan for how facilities can be related to the provision of new housing.

The Act speaks in Section 104(a)(4)(c)(3) of assuring the availability of public facilities and services adequate to serve proposed projects - an immensely important Act; plan in tying together and rationalizing the process of community development, coordinating the work of community structures serving the growing housing population, the growing housing development in the community.

Secondly, and I believe this is probably the most important feature of the Act, it is the essential means for implementing the new social and economic objectives of the Act. The Act marks a significant social change in national urban development policy. For the first time Congress has moved beyond the general statement of 1949 of guarantee of a decent home and suitable living environment for every American family. A laudatory goal, a very important goal, but one that

hasn't been met in large measure. And it begins to specify how that means may be achieved for that sector of the population that has been least --

MR. vomEIGHEN: Your Honor, I would like to object to this kind of testimony.

This is a speech that an acknowledged expert is making, but it's not relevant to the administrative record here in this case. It is unrelated to it.

MR. BELLMAN: On the contrary, your Honor.

THE COURT: Overruled.

Come on. Let's get on with it.

BY MR. BELLMAN:

Q You may continue, Mr. Davidoff.

A The Act addresses, for the first time, economic segregation in metropolitan areas. Prior to this Act Hud had been under orders of Congress to deal with issues of racial segregation.

Now the Act speaks very specifically of the problems of low and moderate income families, or lower income families.

The Act says that the primary objective is the development of viable urban communities. And it seeks to do that through the old provision of a decent home and suitable living environment, and it adds expanding the economic opportunities principally for persons of low and moderate income.

And it is that important element in this Act -- every section of the preliminary Statement of Purposes has the language of " . . .principally for persons of low and moderate income."

To achieve the general goal the Act aims at "the reduction of the isolation of income groups within communities and geographic areas, and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income."

Now, it is both the terms, "the reduction of," --

THE COURT: You're quoting from some article you've written?

THE WITNESS: No, no. I'm quoting from the Act itself, from the introductory Statement of Purposes in the Act.

THE COURT: All right.

A The Act speaks of the reduction of the isolation of incomes within communities and geographic areas. The Act doesn't aim specifically at particular jurisdictions, municipal units of government; but it aims at the conditions of housing within the region in which the jurisdictions to be served under this program are a part.

It speaks of spatial deconcentrating housing opportunities. It is a recognition. And the discussions before

Congress recognize the evidence that has been marshalled by presidential commissions and other studies of the growing patterns of segregation throughout metropolitan areas in the United States. The Act is aimed at defeating those patterns of segregation.

Q I take it your testimony is that the HAP is the critical element in accomplishing that?

A It is that. And I wish to get now to the particular language in the HAP which contains within it the means for seeing that these objectives of expanding opportunity of deconcentrating the housing for lower income groups are met.

THE COURT: Well, now, is it "Professor"?

THE WITNESS: "Mister" now.

THE COURT: Mr. Davidoff.

Now that we have been given this statement of the purposes of the Act, this lawsuit is concerned with whether the provisions of the Act have been adequately complied with.

In going forward from this point on, can it be taken for granted that in dealing with the provisions it is not necessary to footnote every requirement by reference back to something stated in the purpose, so that we can treat this as a lawsuit rather than as an open forum or a legislative body?

I think there is a distinction there that you're

AFTERNOON SESSION

BY MR. BELLMAN:

Q Mr. Davidoff, with respect to the language relating to expecting to reside that emerges in the Housing Assistance Plans, could you tell me the significance of that language with respect to its planning implications.

A Expected to reside is one of the standards by which the HAP is to be judged and is to be prepared. It is, I believe, the crucial element in that plan which itself, as I explained before, is the crucial element in the Act.

It is part of this plan which provides the substantive base for the achievement of the deconcentration of lower income groups. It is the opening wedge essentially in providing for the possibility of desegregation of metropolitan areas by its recognition that large numbers of people work in the suburbs today as there has been a large movement of jobs from the cities to the suburbs, large numbers of people work in the suburbs who cannot afford to live there.

Congress, by requiring that towns that seek housing funds take account of the residential needs of those who are now gaining employment but cannot afford to live in those towns due to the high cost of housing which may result from restrictive zoning practices or may result from market practice, in either case, a large number of workers have been excluded from residence in the towns where they are working - and Con-

gress means by this expected to reside to allow for the potential for some of that working group to begin to be able to exercise the greater choice of having that which is spoken of in the objectives of the Act.

Q Does the expected to reside language build in a notion of regionalism into the Housing Assistance Plan?

A Yes. I think that it is not a fair share formula as that concept has come to be known within the housing field in places such as the Miami Valley, where there have been requirements of participation by all of the communities in that region in a housing solution to problems of lower income families. But it is the first step towards that.

It is saying that each jurisdiction that seeks to be the beneficiary of federal funding under this Act must participate in resolving the very difficult problems of housing for economic and racial minorities.

Q What, in your opinion, will be the impact of HUD approving a HAP which would be inadequate in terms of stating the housing needs of the applicant community?

A Well, I think that were HUD to do that it would perpetuate the patterns of segregation that have been enlarged in the metropolitan areas.

It would be tolerating the existence of non-contribution on the part of the community towards the resolution of the regional problems addressed, the geographic problems ad-

dressed in the Act.

Q Mr. Davidoff, a critical issue that's emerging in this case is the position taken by HUD that it was not possible to structure adequate Housing Assistance Plans at least during this program year, and to effectively defer for a year on the issue of expected to reside.

Now, I would like your opinion, Mr. Davidoff. Could HUD have required, reasonably required the applicants for community development funds this year to come up with an adequate Housing Assistance Plan, especially with respect to the issue of expected to reside?

MR. ADAMS: Your Honor, I'm going to object again.

We're still looking for new information which is supposedly available, and I still haven't heard anything. I object that this is irrelevant.

It's just going over material which is already a matter of record.

THE COURT: I will sustain the objection.

It is for the Court to decide whether or not what HUD could or could not do with respect to deferring the determination of an answer for expected to reside; not for this witness.

MR. HILLMAN: Well, if I would proffer to the Court, the witness' answer would relate to the

practicality of proceeding to make judgments as to numbers of people expected to reside for this calendar year.

Now, I submit that's a critical issue. HUD said it wasn't possible.

THE COURT: The objection is sustained as to the question in the form in which it was stated.

MR. BELLMAN: Okay.

Let me restate the question, please.

Q Mr. Davidoff, in your opinion is it possible or was it possible to derive figures as to expected to reside from the seven applicant communities for this program year?

A Yes, it was.

Q Could you tell me why you reach that conclusion?

A I will.

The information about expected to reside is based upon assessment of needs, and it is not an assessment of an objective fact. It is an assessment of a relative concept of housing requirements.

There is a range of possible responses that could have been given. It isn't that technological survey would reveal the right answer, because there is no one right answer. There is a range of possible answers that could have been constructed by the applicant communities, using some method that would not have been too difficult for them to use which

would not have, I think, required very costly consultants. I think people on their own staffs probably could have gone through this process.

Q Could you outline for the Court some of these processes that you have in mind?

A Yes.

First, I would like to identify that a methodology for estimating needs in housing for low income workers was sent to the Area Office of HUD on May 21st by the Assistant Secretary, I believe, for Community Planning and Development of HUD; David Meeker.

MR. BELLMAN: That's part of the record, your Honor.

THE COURT: Yes. Go ahead.

A And he establishes a methodology which is now part of the record - I assume I do not have to take it - which is a relatively simple device for getting a threshhold figure.

THE COURT: Where does that appear in the record?

MR. BELLMAN: The government attached it to their answering papers to the Motion for Preliminary Injunction.

MR. EPSTEIN: It is attached to the first Thompson affidavit in support of the government's opposition to the Motion for Preliminary Injunction.

THE COURT: But I mean give me a reference to it now; not that I want to look at it.

MR. BELLMAN: Your Honor, I have an extra copy. I will hand it up for your convenience.

THE COURT: Can you refer me to where it is?

MR. BELLMAN: It is attached to --

THE COURT: All right. If you have a copy, hand it up.

A This methodology establishes a basis to get a first estimate upon the requirements for families who could be expected to reside within a community.

There are difficulties with this method that has been presented, in terms of certain census data not available in this region. The key census data that is required appears in the census data under the title of the report as "Journey to Work." And the tables that are provided in the Journey to Work census materials for the Hartford region only provide information about the standard metropolitan statistical area: Hartford County, Hartford City, the portion of Hartford County outside of Hartford City, a portion of Middlesex County and a portion of Tolland County - and then other areas outside of the SMSA.

That material which is called for in Meeker's memo is very helpful in getting a first estimate of what might be expected in a community as a proportion of Hartford County

outside of Hartford City, even though it doesn't give the specific information that would have been more valuable had it been in existence for each town that was applying. But in the absence of that, it still gives a first basis for making an estimate. And the Meeker memo coming directly from HUD suggested a readily available set of materials in the census reports that could be applied.

Now, beyond that approach and the materials that apply here, I think that if I had been an applicant in one of these communities I might have very well taken some steps that would not have been difficult to apprise myself of the conditions in the community in terms of jobs that had been created in the past, going to the employers, particularly employers of large numbers of people who have records under their affirmative action responsibilities, go to the Equal Opportunity Officer, find out by zip code the number of people living outside of the community who work at the plant in the community.

I could find out, probably with their zip code, I might very well find out their salary level. It might be possible to find out, with no divulgence of names, so that we could have had a first estimate of people living outside who were below, within the lower income category, roughly $10,000 in income or below, who were employed in my town if I were living and working developing the application for a town.

I think that information might have been there.

I think it would have been very possible for me to go to the Chamber of Commerce and begin to talk with members of the Commerce Department who have dealt with these issues of employment in the community, get some sense from them of their knowledge, particularly for those offices in the community that employ less than the requisite number that are required in order to have an EO Office, and respond to those requests.

I think it would have been possible to do some simple surveys at the local shopping center, go into the Grand Union, or whatever the name of the supermarket is in the town, make some inquiries among the clerks and others who were working there, or in the Five & Dime store, about where they are living.

We know from experience that many people, particularly these lower paid jobs, are unable to live in the community. None of this might have taken much time at all. It really would have begun to get a sense of how many people reside outside the town. Now, I think that could have been done.

Then in terms of the expectations of new jobs coming in, there are projections in every town - the town plans project new jobs for the town, there is knowledge by the town officials of new applications for zoning change

which will lead to the creation of new industries or commerce, again the knowledge of the floor area that is proposed to be developed, speaking to the developers; their applications would reveal something about how big the industry or the commercial activity would be and we would get some insights into the number of workers.

From that insight into the employment expected to be generated in the future one could, I think, using the data that is requested in the Meeker memo and other appraisals of the proportions of a total new work force that would be non-resident that would have income below $10,000, it would be perfectly possible to make some kind of range of judgment of the number of people.

Q With HUD's assistance could the applicant communities have done this in a matter of days or weeks, or is it a much more protracted process that you have in mind?

A No. I think this is a matter of days. I don't think it would have taken very long to do this.

Q Is this effort -- strike that.

The Meeker methodology with respect to Journey to Work tables, would that be able to be accomplished next year?

A The problem that has been created this year for towns that don't have the specific materials addressed to their towns will exist every year so long as that material is not there.

The expected to reside, which is the crucial element of the HAP, must be filled out. The towns won't be in any better position next year to do it, except by our common education in this experience, than they were before.

The data won't change.

THE COURT: Just a minute, please.

BY THE COURT:

Q The problem will be the same. The tools will be the same.

But part of the problem is the education of the applicant as to how to treat the problem, isn't that it?

Isn't that what you're telling us - how they should have gone about it, or how they could have gone about it to get some estimate that would pass muster, right?

A Well, I don't know if I'm really saying that, your Honor, because I do believe I wanted to expand my answer just to say that I think a lot of the towns had a good deal of this material as part of their common experience. In working with the towns, that that kind of knowledge was there.

I think this was not so difficult.

Q All right. You're generous in your estimate of other people's appreciation of a problem which is to you simple because it is one that's in your field of specialty.

But isn't some instruction as to the possible devices or kinds of inquiries that can be made and ought to be made,

Don't you think some period of education and some method, or some system of method, education, is desirable?

Do you think a Meeker memo does the job for every applicant for a grant?

A I think I could have shown ways in which other methods might have been equally as helpful. But that's helpful.

The Act was passed in August of 1974. The language was there. The applicant communities had ample time to review the regulations. The preliminary regulations came out in September of the year.

I would think that entitlement communities that knew that they would have to make this understood these new provisions. I'm saying I don't think they are very difficult.

I think there's another way to view the whole issue that is involved here that both HUD and these local offices are resisting. They are resisting the idea that they have to begin serving the region. And that isn't something new, because there's testimony that where there have been programs calling for communities to participate --

Q Well, I'm sorry. I'm sorry. I didn't ask you to estimate attitudes. All I was talking about was actually instruction and information, and not assuming that there's a resistant or obstructionist attitude.

A Assuming an open attitude, I think that they had

ample time to be educated and that they could have --

Q Well, what has been done?

Now, here is a memo that you refer to here dated May 21st of 1975 that gives what you say is guidance as to how to make this estimate of expected needs. That comes out in May of '75.

Was there anything prior to that?

A Yes, there is.

Q What was it?

MR. BELLMAN: We're going to get to it.

A Let me see if I can find it here.

MR. BELLMAN: Here.

A That's one of the things I was looking for.

I would say that the Meeker memo was a response to those communities that were beginning to face the difficulties of not wanting to respond, or not responding to that expected to reside and looking for guidance.

The Assistant Secretary of Equal Opportunity, Gloria Toote, on December 19th of '74 sent a memorandum to the EO staff offices of the Area Offices of HUD to assist them in providing reviews of those applications, understanding that there might be problems, and trying to prepare the staff of the Area Office.

And she sent forth a set of identification of information, census information, maps, workable programs, publicly

available studies by public interest groups, planning commissions, areawide planning organizations, so that HUD might begin to organize itself to gain, in her words, a prior knowledge of the special needs of any identifiable segment of the total group of low income persons in the community.

Now, I think HUD was aware that these issues might arise, and I think they were beginning to try to prepare the Area Offices for being able to respond.

Q All right. That was in December of '74, HUD realized that we had better teach our own people what this is all about and how to go about it and what to look for, and how to be in a position to help applicants. Right?

A Yes, that's right.

Q Right?

A Right.

THE COURT: All right.

MR. F[illegible]MAN: Your Honor, I would like to make as part of the record, I guess it would be Plaintiffs' Exhibit 1 in these hearings, the Toote memorandum of December 19, 1974. It's a HUD internal memorandum.

MR. vomEIGHEN: May I see that memorandum?

THE CLERK: Shall it be a full exhibit, your Honor?

THE COURT: Yes, full exhibit.

MR. BELLMAN: They are part of HUD. It is a division of HUD and it is part of the review process within HUD, the Equal Opportunity Officer reviewers.

THE COURT: As one of the divisions that is called upon to review applications?

MR. BELLMAN: Yes.

Each one of the files contains the actual review by Equal Opportunity of the seven grants.

THE WITNESS: If I may, the author of the memo was an Assistant Secretary of HUD - Gloria Toote.

THE COURT: All right.

A Now, this additional document is United States Department of Housing and Urban Development, Housing Assistance Plan Instructions for Forms, HUD 7015.8 through 11. It's general instructions sent out by HUD for the filling out of the Housing Assistance section.

I'm afraid I don't have a date on this. Maybe somebody from HUD will be able to find a date on this.

But in speaking of the section dealing with additional households expected to be residing in the locality, the instructions say net of those expected to leave, taking into account changes in employment and population and other demographic and labor market changes.

Now, that's all that HUD, at that point, had to say about this. But it was just some indication of what might be

looked at: changes in employment and population and other demographic labor market changes, as insights that a local community might have in filling out this form.

BY THE COURT:

Q Well, that would recognize that you would have to net those expected to leave.

A To leave.

Q And what are the criteria for estimating that?

A Well, I think in most of these communities these communities are still in a growth cycle. It is not like the City of Hartford, which is now losing population. There are figures which show the net in migration, the net migration out over time, and I think estimates can be made by income categories of changes from 1950 or 1960.

Q Then you just take trends of the past and say that's what the situation is going to be next year?

A I think that's the only way we can reasonably do it, unless there's some more precise information at hand. And that precise information does not exist in all the years between census.

THE COURT: Okay.

MR. BELLMAN: I would like to have marked as Plaintiffs' Exhibit 2 the Housing Assistance Plan Instruction Form, HUD 7015.8 through 11.

THE COURT: We don't have a date for that,

Counselor?

MR. vomEICHEN: It's the blank form.

MR. BELLMAN: It is the blank form.

Do you have the date when that was prepared?

MR. vomEICHEN: I think it's November of '74, but I'm not sure.

MR. BELLMAN: November of '74 is the response by counsel for HUD.

THE CLERK: Shall it be a full exhibit?

THE COURT: Yes. Exhibit 2.

(Plaintiffs' Exhibit 2: Instructions for HUD Form 7015.8 through 11, marked full exhibit.)

MR. BELLMAN: There is a notation on the top that was handwritten which was not, of course, part of the form.

MR. vomEICHEN: May I see that, please?

MR. BELLMAN: Sure.

We have found a reference. It was definitely November of '74 that this form was prepared.

THE COURT: All right.

BY MR. BELLMAN:

Q Mr. Davidoff, do you have any further statement with respect to calculation of expected to reside?

A Well, I was thinking of the number of documents one might look at in changes in land use.

One thing that I left out is the knowledge about transportation, studies that have been made, special studies by the Department of Transportation or by local agencies that have examined methods of movement in the community that might reveal something about the patterns of movement of workers in the region. It may have been helpful. And there are such studies extant.

The point I think that I would like to emphasize is at the end a judgment had to be made. Now, a judgment could be made in terms of the knowledge of each of these communities that, in fact, there will be a significant number of lower income people working in those communities. They're there today and a larger number will be there with the growing jobs in the future.

Some proportion of those would probably prefer to live in the community. Surveys of attitude might have revealed something of that order in the community.

Finally, a community might have made, for the first year, a tentative judgment. It might have been wrong. They might have said: In this year we expect we will put in a figure. Maybe it's a hundred, maybe it's a two hundred figure. It's a figure that gives respect to the attitude of the Act and says, yes, we understand something will happen. Of course it will happen.

But it isn't zero, because the zero figure is patently

absurd in terms of the reality of what is happening in each of these communities. There is no basis at all in fact from any of the data on the growth of these communities and in terms of the objectives of this Act for zero to be put in.

Something, a reasonable first estimate might have been made, and then educated upon and developed further and made more precise with experience.

Q Mr. Davidoff, you may have covered this. I would like to ask the question, though.

You have focused on what the applicant could have done. What could HUD have done in terms of adequate review of the Housing Assistance Plans that were submitted?

A Well, the analysis of the applications on HUD's part would, I believe, under the law, have to be an affirmative analysis; that is, it would have to analyze what the communities were doing in terms of the objectives of the Housing Assistance Plan to meet the objectives of the Act, under the guidelines of the 1968 Act mandating an affirmative response to HUD in trying to enlarge opportunities for minorities.

I think that that meant that HUD should have apprised itself, and I think it is knowledgeable, - that my box over there, I don't think we have to introduce into evidence - the ample evidence that exists in this region of patterns of discrimination, patterns of segregation, shifts in location of jobs from the city to the suburbs, the fact

that almost 90 per cent of the minorities of non-whites live in Hartford, though Hartford is but a quarter or a fifth of the total population of the region.

The fact that Hartford has a disproportionately high number of the impoverished of the region; that the changes year by year in the balance between the median income in Hartford and the median income of the area of the SMSA outside of Hartford is growing.

That the disparities between the rich and the poor, the white and non-white have grown. This is information that in the broadest sense has been recognized by presidential commissions.

Here in Hartford it has been recognized by the agency that preceded CROG, I forget the title of that organization, that has reports that speak of discrimination --

THE COURT: Well, now just a minute.

I mean this is all enlarging upon the original statement that HUD is required, in your opinion, under the Act, to take affirmative action to enlarge housing opportunities for the minorities. And you go on and muster a lot of support for that assessment of the Act. Right?

I don't know that that's directed to the issue that is before the Court.

You may conceive, as you've indicated, that

Q One final question, Mr. Davidoff. What, in your opinion, will be the practical effect of HUD deferring for one year its requirement of an adequate Housing Assistance Plan?

THE COURT: Well, now you talk about one requirement. One element of the Housing Assistance Plan --

MR. BELLMAN: The expected to reside.

THE COURT: Right. That's what you are talking about?

MR. BELLMAN: Yes.

THE COURT: You understand that?

THE WITNESS: Yes.

THE COURT: Yes.

A I think, as I hope I have indicated, HUD's failure to require that to be filled out this year, other than ways in which I said really avoided the issue, I think is to perpetuate and enlarge patterns of segregation in this area that the Act was passed to combat.

BY THE COURT:

Q Well, now just a minute. I don't want to be in a position of arguing, but as I understand it this is not a permanent waiver of that requirement. It just says for this one year we will let it go, but you've got to come up with the stuff next time around. Isn't that it?

I mean I don't see how "perpetuate" fits into that.

A Your Honor, I'm speaking with expert opinion now as one who has been close to the practice of HUD over the years. And I think that this is just very typical of excuses and delays that are always given that have allowed discrimination to be rampant under HUD's programs.

Q All right. I mean if I understand you, you are evaluating a bureaucracy and not what the language says.

You are taking the language as if it provides a permanent barrier to hide behind --

A I think it establishes a precedent. It establishes a tradition that this isn't an important element, yet I believe and I think Congress believed it was a crucial element in this Act.

THE COURT: Okay.

MR. BELLMAN: We have no further questions from this witness.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. EPSTEIN:

Q Mr. Davidoff, you said that you participated in the formulation of the administrative comments filed by the City of Hartford in this case?

A Yes, Suburban Action assisted the City of Hartford.

Q How did you assist them?

A That is to be reheard.

Q Getting back to this documentation or evidence of specific discriminatory practices, I'm interested why you did not include this in your study or why you did not recommend that the city submit it with its administrative comments.

A The first question you asked me, why it did not submit to the --

Q Yes.

A Well, because I think it was felt that this was knowledge -- what I was trying to say about the affirmative analysis by HUD, that it was knowledge that everybody knows who works in the City of Hartford about the metropolitan discrimination. Every agency spoken about.

Q But if you wanted to get your showing across to HUD it should have been included in there, right?

A I think it was apparent in the comments that we made in terms of the failure to respond to the expected to reside figure that jobs had grown there, that there was opportunity for development.

Q I'm talking about discriminatory housing complaints.

A No. Excuse me.

Q You said that you have evidence of discriminatory complaints with regard to these communities. But yet they were not included in the administrative comments?

A Not on the part -- it wasn't what was --

Suburban Action was asked to review these in terms of the planning documents that had been submitted by the town. And it was that that we looked to.

Q But as far as you know, there was no such evidence submitted by the City of Hartford?

A No, I don't believe there was.

Q What significant facts and data did you rely on in your study?

A The United States census reports and evaluations, analyses of those reports which had characterized -- there were descriptions, really, of the communities, the growth in jobs, the growth by --

Q It is the raw statistical data again?

A No, no. It's not just the raw. It's the raw that has been prepared.

Some sophisticated methods. For example, the quintile analysis, analysis of the movement of income groups by income fifths; examining one community relative to the SMSA in terms of how there's been a movement of different income groups throughout the region, to try to see which communities have absorbed which proportion of the communities of the population.

Q Why is it, Mr. Davidoff, that the comments of the city really are very general in nature? They don't contain any specific facts or data.

A I think really I'm the wrong man to ask that. I think you should speak to the city.

Q Why wasn't the study incorporated?

A I think you do have to speak to the city to get that answer.

Q So you are not relying on any other studies that were not mentioned, other than what was mentioned this morning on the non-residential construction; you are not aware of any other studies that the city relied on?

A I'm not sure what you're questioning me about about what I said.

Q I'm trying to find out again, the Court is interested in inquiring into new evidence --

A The new evidence I said was the Journey to Work evidence, the Meeker memo. My evidence was that there is ample material here now that could have been examined by a community.

Q Let's get to the Meeker memorandum. Did the Meeker memorandum contain any options for HUD to exercise?

A In terms of filling out the form?

Q No. In terms of utilizing the methodology suggested in that memorandum.

A I think it did. I think there were some --

Q How many were there?

A No, no. You'd have to show it to me. I don't recall.

Please let me see.

(Document handed to the witness.)

Q Are there options indicated in there which HUD has available to it?

A Please let me just review this.

Yes.

Q What are those options?

A The first is adopt the HUD figure as a first year only figure. That is, that I think HUD could have prepared an estimate in recognition of the existence of a need not otherwise identified in the applicant's HAP. That's a first.

Q Second?

A Second is adopt its own figure, with appropriate citation of data and methodology consistent with the general universe need and not limited to short term goals.

Q And third?

A Indicate what steps the applicant intends to take to identify a more appropriate needs figure by the time of its second year submission.

Q Well, isn't that what HUD, in effect, did was follow the third option in requiring these communities to come up with more accurate assessments?

A Well, I didn't even know that that was entirely disjunctive separate from the other two, because it says "Indicate the steps." I didn't know that.

Q There are three different options indicated in that memo?

A Let me just see.

It must adopt -- I see, yes. Or indicate what steps. I don't know if that was related to one of the other two, the first two.

Q That is the third option?

A The third option, I think that's --

Q Isn't that the option that HUD followed?

A -- entirely inappropriate under the law. As I understand the law, there's no basis for that.

Q I'm just asking you if that is the option that HUD is to follow?

A It's the option HUD put forth.

Q Now, you said before that on the expected to reside data, you admitted that there is a range of possibilities as to ascertaining these needs.

Now, if there's a range of possibilities how can you say that either what HUD did is plainly inconsistent or plainly inappropriate? You, yourself, admitted there's a range.

A I would say those words are plainly inappropriate to anything in the world because in most things we deal with in this universe, in the field certainly of urban policy and programs, we are dealing with ranges. We are dealing with not

objective facts in which a precise figure can be derived.

Q So there isn't just one answer?

A There is not one answer, that is right.

Q Okay.

A But there are some answers that are patently unreasonable under certain circumstances.

Q But there isn't just one way of doing it?

A That is right.

Q Now, again you rely on projections of new employment in these communities. Did you submit specific data on this to the city in the preparation of the administrative comments?

A No, I don't -- you see, I think you misconceive the role of the critic under the A-95 review process.

I think it was our role to examine the application as it had been made, to point out its deficiencies. I think we had done that. I don't think that we then went around and redid the application for each community.

Q But that's what I'm getting at, Mr. Davidoff. The administrative comments point up the weaknesses, but they do not present significant facts and data which is the statutory test here.

A Is that a question? If that's a question I would say --

Q You can comment.

available.

Q Now, you mentioned before that you thought that the zero expected to reside figures in these applications, I think your word was "absurd"?

A I think that was it.

Q Well, why did the City of Hartford have the same zero figure?

A The City of Hartford has been losing population for a long time.

Q But if it was absurd, then there should have been some figure.

A For Hartford it would have been a negative figure. Hartford is losing population. These communities are gaining population.

Hartford has been having problems of low income families. These communities have not.

A negative figure would have been appropriate. People have been migrating out of Hartford. That's generally known.

Q Since you said there was a range of possibilities under your analysis, wouldn't you assume that there would have been some figure available other than zero?

A Not in terms of net movement of low income populations. Not at all.

Q Do you know whether HUD accepted the zero figure

THE COURT: Well, I don't know. The representation as to the extent to which it has been approved --

MR. BELLMAN: Excuse me?

MR. EPSTEIN: But it's not released yet, your Honor. It's not in effect.

MR. BELLMAN: It is released, your Honor. It is available through the Freedom of Information. It was provided to us from HUD and it has what is called an A-87 Clearance by HUD.

THE COURT: I will admit it, for whatever it is worth, under those circumstances, as some expression by the Department, which is the defendant here, relating to its interpretation to the Act which we are considering.

MR. ADAMS: I would like to object.

THE COURT: Over your objection, Mr. Adams.

(Plaintiffs' Exhibit 3: Document entitled Community Development Block Grant Program, marked full exhibit.)

THE COURT: Next witness.

MR. ZITSER: Mr. Arthur Green.

A R T H U R G R E E N,

called as a witness, being first duly sworn, was examined, and testified as follows:

THE CLERK: Will you please state your name.

THE WITNESS: Arthur L. Green.

THE CLERK: And your address, Mr. Green?

THE WITNESS: 121 Lenox Street, Manchester.

THE COURT: What is your occupation?

THE WITNESS: I'm Director of the Connecticut Commission on Human Rights and Opportunities.

DIRECT EXAMINATION

BY MR. ZITSER:

Q How long have you held your position as Director?

A I've been Director of the Commission since 1966.

Q What are some of your duties and responsibilities as Director?

A As Director of the Commission I am responsible for the overall administration of the agency's programs and policies. Essentially we are charged with the administration of the state's antidiscrimination laws.

Q And is the Commission the chief civil rights agency of the State of Connecticut?

A Yes, we are.

Q And how large is the Commission's staff?

A Ninety-two persons.

Q When did you first join the Commission's staff, and in what capacity?

A I became an investigator with the Commission in January of 1960.

Q And could you provide a brief history of your educational background?

A I have a Master's degree in education and I've just completed my final work for the Doctor's degree in education from the University of Massachusetts.

Q Do you serve on any other official boards?

A I serve on a number of national boards of directors.

The International Association of Official Human Rights Agencies, the National Association for Human Rights Workers.

I served on a number of state boards and commissions that are policy making in nature. The Governor's Criminal Planning Commission; the Land Use Transportation Planning Board, the Policy Planning Body.

I serve on the Board of Directors of the State NAACP. I am active in a number of community organizations.

Q Are you frequently called upon as a consultant by the federal government?

A In my former capacity as Chairman of the International Association of Official Human Rights Agencies. I'm presently the chairperson of that organization's Federal Liaison Committee. In that capacity I frequently consulted

with officials in regard to their civil rights enforcement effort.

I'm also called upon by other state and local commissions on civil rights around the country for consultation.

Q Now, has the Commission reviewed the applications for community development funds of the communities of Windsor Locks, West Hartford, Enfield, Glastonbury, Vernon, Farmington and East Hartford?

A Yes, we did.

THE COURT: What did you do with respect to them?

THE WITNESS: We reviewed them.

THE COURT: You reviewed them?

THE WITNESS: Yes.

BY MR. ZITSER:

Q How did the Commission first become involved in the review of these applications?

A In 1972 the Commission was granted authority under the OMB circular A-95 to review certain kinds of applications for certain federal funds.

The Commission also on December 10th of 1974 was requested by HUD to review applications for funds under the Community Development Act of 1974.

Q Is this a copy of that letter of December 10th, 1974?

THE COURT: All right. May be made an exhibit.

MR. ADAMS: Well, we haven't seen it.

THE COURT: Show it to counsel.

BY THE COURT:

Q Well, you're not quite "Dr. Green" yet, are you? You say you've completed the work?

A In January.

Q But you haven't got the certificate?

A In January.

Q Do you have anything to do with the Pardon Board?

A No.

MR. ADAMS: Your Honor, my question on this would be as to how that letter relates to information which is supposedly available to HUD and the towns if it was not used by HUD and the towns. That letter predates all of this.

MR. ZITSER: Your Honor, we're trying to review how the Commission first became involved. This was an official request from HUD's Regional Office and I think has great bearing on this matter.

I respectfully request the Court to accept it as an exhibit.

THE COURT: Objection overruled.

(Plaintiffs' Exhibit 4: Letter dated 12/10/74 from Vera to Green, marked full exhibit.)

BY MR. ZITSER:

Q Now, did Mr. Vera -- I assume it is signed by Mr. Vera of the Regional Office.

A Yes.

Q Did Mr. Vera's letter set down any standards for your review?

A No, it does not.

Q Did you receive any further request for information from HUD's Area Office?

THE COURT: What is that, Exhibit 4?

THE CLERK: It would be Exhibit 4, your Honor, when we get it.

THE COURT: All right.

Well, the letter speaks for itself. It doesn't set down any standards.

Go ahead. Next question.

Q Now, did you receive any further requests for information from HUD's Area Office?

A Yes, we received a request for racial data relative to the entitlement communities from the Area Office.

Q And is this a copy of that letter?

A Yes, it is.

MR. ZITSER: I would also like to introduce this as an exhibit. It does not appear in the record.

THE COURT: All right.

MR. ADAMS: Your Honor, I object to this on the same basis: It has nothing to do with the new data that was supposed to be the subject of this.

THE COURT: Exhibit 5. Objection overruled.

(Plaintiffs' Exhibit 5: Letter dated 1/16/75 from Buntin to Green, marked full exhibit.)

BY MR. ZITSER:

Q Now, as a result of HUD's official request for review and information, did you contact the chief executive officers in each of the seven suburban communities for pertinent information?

A Yes, we did. We requested that they provide persons on my staff throughout the state and the regional offices with certain information; namely, we wanted to receive copies of the EEO-4. The EEO-4 is a reporting form that every employer must provide the federal government on a periodic basis.

We requested information about their employment breakdown, the work force analysis of the town.

THE COURT: EEO forms?

THE WITNESS: EEO-4.

THE COURT: EEO-4. Would the town have that?

THE WITNESS: Yes, sir. Each town and each state government is required, as of March of 1972,

to provide the EEOC with certain work force information.

BY MR. ZITSER:

Q And to what extent did you assign staff for the purpose of providing HUD with a review of the community development applications?

A Well, we knew we would have many such applications to review. Normally one person has this as a full time assignment. But because of the volume of work involved, I assigned approximately twelve or fourteen persons entitled Community Relations Specialists to assist.

Myself, I provided some time in the overall management of the project. Our Chief Counsel's office provided some input. And we provided input from other members of the staff as required - our research staff, for example.

Q And how long did it take the Commission to prepare its reviews?

A The amount of time involved varied, but there's a mean time of about thirty days, roughly.

MR. ZITSER: Your Honor, the third supplemental affidavit of Mr. Lawrence Thompson contains many of the reviews which he pointed out did not appear in the record to this state. There are still two reviews that are missing, that is, the Town of Farmington and the City of East Hartford, which I

MR. McNAMARA: I have no comment, your Honor.

BY MR. ZITSER:

Q Mr. Green, I would refer you to the December 10th letter of Mr. Vera that has been listed as Exhibit 3. I would refer you to Page 2. Is there a specific request for information in Mr. Vera's letter on Page 2?

A Yes.

Q Would you please read that request?

A Yes. On Page 2, the letter in question:

"It would be most helpful if you would notify this office no later than January 1st, 1975, of any findings of discrimination made by your agency against entitlement communities, city agencies or municipal subdivisions which might be involved in community development programs.

"We would also appreciate your alerting us to any private civil rights litigation you may have knowledge of involving entitlement communities, city agencies or municipal subdivisions."

Q Now, did you provide the HUD Regional Office with any findings of discrimination with respect to the seven communities?

A Yes, we did.

MR. ZITSER: Your Honor, I would point out that this does not appear anywhere in the record.

Q Do you have any knowledge, Mr. Green, whether or

not the HUD Regional Office sent the information that you mailed to them to the HUD Area Office?

A No, I don't.

Q So as far as you know, this may not have been before the HUD Area Office, am I correct?

A That's correct.

Q Will you provide, incidentally, copies of all of these reports that you sent to HUD's Regional Office at the first opportunity?

A Yes, I will.

Q Okay. Now, approximately how many discrimination complaints did you mail to HUD's Regional Offices in regard to these seven communities?

A Well, we reviewed thirty-three entitlement communities initially. We subsequently reviewed many more. But we mailed over some four hundred copies, Xerox copies, of our complaint data card showing the respondent complainants.

Q These are just in regard to these seven communities?

A Yes.

THE COURT: No, he didn't say seven. He said some.

THE WITNESS: We reviewed thirty-three altogether. The letter required us for the total state. Of course, the seven involved here were part of that thirty-three.

THE COURT: Right.

Q (By Mr. Zitser) How many discrimination complaints did you submit just in regard to these seven?

A I haven't really added those up, but I know we mailed a record of over some four hundred.

Q Just in regard to these seven?

A With regard to the seven, I haven't really added those up.

MR. McNAMARA: Excuse me, your Honor, but counsel keeps insisting that the over four hundred figure of Mr. Green relates to the seven communities.

THE COURT: He's not fooling you, is he?

MR. McNAMARA: No, your Honor.

THE COURT: He's not fooling the Court either.

MR. McNAMARA: Then I don't have anything further to say, your Honor.

THE COURT: All right.

Q Do you have any idea approximately how many of these discrimination complaints --

THE COURT: He has already answered that, and he said he doesn't. He has not figured them up.

Is that correct, Mr. Green?

THE WITNESS: That's correct.

THE COURT: Right.

Now the next question.

A 285

Q Have there been any more discrimination complaints brought to your office from any of these seven suburban communities since January, when you mailed these complaints to HUD's Regional Office?

A Yes. We mailed the original requests in January of 1975, and since that time there's been more complaints filed with us involving the seven communities.

Q Now, these complaints are information generally available to the public or any interested organization that would like to review them?

A Yes, our records are public.

Q If I picked up the telephone and requested this information, would you provide it to me?

A We would provide you with certain information about the cases, yes.

Q Okay. Did the HUD Area Office ever request this information?

A No.

Q Now, how extensive are your files on these complaints?

A Well, they're very extensive. They contain a great deal of detailed information about the complainant, that is, the charging party, and the respondent.

They contain field reports as to the investigation. They contain recommendations of the investigator. They contain information about conciliation efforts and whether or

not the case was adjudicated or certified to public hearing. They are rather thick files.

Q Now, all of these discrimination complaints were brought against the town, am I correct?

THE COURT: No.

Q That you are referring to, as opposed --

THE COURT: No.

Q Do you have separate files of complaints in regard to apartment owners, individuals within the town?

A Yes, that's correct.

Q The complaints that you are referring to were brought against the town itself, am I correct?

A Yes.

THE COURT: What? Complaints against the town?

THE WITNESS: Yes. We also received complaints against towns in our state.

MR. ZITSER: I'm going to go into specific examples of these complaints, your Honor.

THE COURT: All right.

BY MR. ZITSER:

Q Do these complaints against the towns, not against individuals, involve discriminatory employment?

A Yes.

Q Do they involve discriminatory housing?

A Yes, in some instances.

Q Will you give me an example of a discriminatory housing complaint brought against one of these suburban communities?

A Well, some of these suburban communities have public housing --

MR. McNAMARA: I'm going to object to that, your Honor.

The question was, I think, specifically one community and we're off on several. I wish that your Honor would instruct the witness that if he would mention a community first. If he doesn't mention East Hartford, I'm not going to be involved. If he does, I want to listen carefully to what he says.

THE COURT: Pick a town, Mr. Green.

THE WITNESS: Pardon?

THE COURT: Pick a specific town.

A We have received complaints against the East Hartford Public Housing Authority alleging denial of access because of race. There's a race discrimination allegation.

We received complaints against the Town of West Hartford in the area of employment practices.

Q Go ahead. I'm sorry to interrupt you.

A Alleging discrimination on the basis of sex discrimination.

Q Now, as the state's chief civil rights officer would you characterize each of these seven communities who are defendants in this action as discriminatory employers?

A The Commission looks at discrimination in two basic ways: One, through the filing of individual complaints by persons, or the Commission may initiate its own charges.

We also look at the employment patterns or practices or work force analysis of the town, and we determine that way also that a respondent or someone subject to the law may be in violation.

We do characterize the towns involved as discriminatory in terms of their work force. If you do a work force analysis on any of these towns as employers you will find a pattern and practice that strongly suggests discrimination.

Q Okay. Have you found anything in your review of any of these seven suburban applications which you believe provides sufficient assurances that these federal funds will not be used to further these discriminatory employment patterns?

A No.

Q In regard to the assurances of the town, these assurances usually appear in Index A of all the towns. Are you familiar with these assurances?

A Yes.

Q In regard to these assurances did HUD require certification of compliance with Presidential Executive Order

But if that's not part of the requirement --

MR. ZITSER: It is part of the requirement that all federal agencies --

THE COURT: You contend it should be?

MR. ZITSER: No, I'm not saying it should be, your Honor.

As Mr. Green has pointed out, this is a requirement for all federal agencies, to seek compliance with these executive orders.

THE COURT: But it's not an assurance that the town has to give, right, in connection with its application?

MR. ZITSER: Your Honor, we are contending that it is an assurance and that the failure to provide this assurance leaves a deficiency in the town's applications.

It is a requirement that all federal programs --

THE COURT: I'll allow the contention and then go on to something else.

MR. ZITSER: Yes, your Honor.

BY MR. ZITSER:

Q What were the standards that your Commission employed in reviewing the application of the seven suburban communities?

A Well, we used the U.S. census data. We examined

carefully the Capitol Region Council of Government's Regional Plan of Development, particular the housing element of that plan; and the Connecticut Department of Labor data on labor and market area availability for minorities and women.

We also, of course, applied our own judgments from the statutes that we administer as to whether or not the applications might have an impact in terms of civil rights.

Q Now, I notice that in each one of your reviews of the town's applications, you made an affirmative action analysis. Why did you decide to make such an analysis?

MR. vomEICHEN: Your Honor, I object to this line of questioning.

This affirmative action program involves in-house employment of the particular community involved. It's not the subject of the complaint.

There was no allegation of employment discrimination. The allegation was of housing discrimination. That's not the subject of this litigation.

MR. ZITSER: Your Honor, it is the subject of this litigation. If they will read our complaint they will see that we allege that there are violations of Title 8, which is the federal housing law of 1968; and Title 6, which is the 1964 Civil Rights Act. Both of those Acts, as well as the 1974 Act, require affirmative action.

BY THE COURT:

Q You made an affirmative action analysis of each one of these applications?

A Yes, sir. We requested of each applicant an affirmative action plan. Some entitlement communities did not have such plans. But those that did, and the seven communities in question, all submitted plans to us voluntarily.

Q Well, in determining to do that was that because it was of instructions or suggestions from HUD?

A Sir, the letter of December 10th to us from Joseph Vera - I'll call your attention to that again.

Q Yes. What do you refer to there?

A In the first paragraph Mr. Vera says:

"The emphasis on minimal federal control in the legislation makes the role of state human rights agencies of critical importance in monitoring equal opportunity aspects of community development."

That meant to us that our state law had to apply. Our agency's responsibilities had to apply the area of equal opportunity. Therefore, our agency's policy is to require of employers - and towns are employers - affirmative action plans. And that's what we looked at in analyzing review.

Q Well, the equal opportunity aspects of community programs and Housing Assistance Plans is something of a little

different emphasis than affirmative action, isn't it?

A We don't think so. We think the idea of non-discrimination embodies the notion of affirmative action.

You can't have equal opportunity, whether it be employment or housing, without taking on an affirmative posture. You can't correct for discrimination, sir, unless you do have affirmative action plans.

MR. vomEIGHEN: Your Honor, I agree that affirmative action is an important element. But one is related to housing and one is related to employment.

Employment is not in issue in this case. Employment affirmative action plans are not required by the Housing and Community Development Act of 1974. It is not related to the affirmative action under Title 8.

I don't see the relevancy of this testimony.

MR. ZITSER: Your Honor, HUD used to require affirmative action plans prior to the 1974 Act.

THE COURT: Just a minute.

Well, to some extent these Housing Assistance Plans and these development programs do call for the employment of people.

MR. vomEIGHEN: That's right, your Honor.

THE COURT: Yes.

We submitted them.

We found them totally irrelevant, but we have seen them.

THE COURT: All right.

So go ahead.

MR. vomEIGHEN: They are part of the record, your Honor, already.

THE COURT: They are part of the record, yes.

So what now?

BY MR. ZITSER:

Q Did the applications of the seven suburban communities address the needs of low income individuals and minorities other than the elderly?

A In my judgment, not adequately at all.

Q And did some of these applications even fail to address the needs of low income elderly?

A Yes.

Q Now, why did the Commission look to regional needs when reviewing the seven suburban applications?

A Well, we don't feel the problems of the poor and persons that are discriminated against can be resolved adequately without a regional approach - for example, given the problems of the City of Hartford, or any other urban setting or inner city setting.

You can't resolve those various kinds of housing,

educational, employment problems within the confines of a given city. You must approach them on a regional basis.

Q Did you receive any written communication from HUD, or were you present at any meeting when HUD requested that state commissions look to regional needs in reference to their reviews?

A Yes. In November of 1974 I attended a meeting in Boston at the request or invitation of former Secretary Lynn of HUD, at which time he briefed several persons in the room about the new law.

Throughout his comments, and his staff present, he stressed the regional approach to the Act; that the essence of the Act was regionalism, that many of the problems that the Act sought to deal with involved regional solutions.

Q And this was in November of 1974?

A November of 1974.

Q Now, did the applications of the seven suburban communities address the needs of the region?

A We don't feel they did.

Q Would you characterize all your reviews of the seven suburban communities as negative?

A Yes.

Q Did you make any recommendations in regard to the approval or disapproval of these applications?

MR. EPSTEIN: Your Honor, I want to object to

this testimony. It's all part of the administrative records in the comments that the state commission filed.

THE COURT: Maybe I won't even have to read it after I hear his answer.

Were they negative?

THE WITNESS: Yes, they were negative.

THE COURT: All reviews were negative.

BY MR. ZITSER:

Q And did you make any recommendations in regard to the approval or disapproval of these applications?

A With respect to the funding, you mean?

Q Yes.

A No, we did not.

Q And why didn't you make any recommendations?

A We didn't see that within our purview. We felt our purview to be within the A-95 procedures to analyze the material sent to us by the clearing house, to make an analysis and make reports thereon, or make comments really; but not make recommendations as to whether an applicant should receive its funding or not. We think that's the federal government's responsibility.

Q If you had been called upon to make recommendations, what would your recommendations have been?

A We would have recommended no.

Q Would you characterize your reviews of these seven suburban community applications as raising serious allegations in regard to their substance?

A Well, we found them deficient in substance; that is, we didn't find the kind of information we needed to many times make better judgments. We had to act on what was before us. The applications contained certain information and that's what we had to work with. So they were lacking in substance, in many areas.

Q Did you find serious deficiencies in regard to each of these applications?

A You mean the affirmative action plans?

Q In regard to their Housing Assistance Plans.

A Yes, we did.

Q And community development budget?

A Long range, short range objectives; yes.

Q Did HUD's Area or HUD's Regional Office make any written requests for further substantiation or information pertaining to the Commission's review of the seven suburban applications?

A No.

Q Did it make any oral requests?

A No.

Q By way of an overview, what is the general ratio and socioeconomic makeup of the Hartford region?

A The greater region, I would characterize it - and this is rather well known - the core of that region, which is Hartford, is highly poor in terms of economic opportunities. Its racial makeup is largely black and Spanish speaking.

As one goes from the core to the periphery of the region you'll find higher income groups, you'll find a predominantly white community, and the further you go from that inner core ring it becomes more and more rural and more and more predominantly white, and more affluent.

We in the agency, over the years, have had an opportunity, in terms of processing complaints, in talking with and working with community groups around the area, find a great deal of poverty and discontent in the area. This discontentment expresses itself in terms of the outer cities; the suburban towns.

Q So that minorities and low income individuals are concentrated within the inner core city of Hartford?

A Yes, they are.

Q And has this pattern of concentration increased or decreased during your fifteen years with the Commission?

A It's increased.

Q Substantially?

A Substantially.

Q Have the millions of dollars of federal funds, federal housing funds, in particular, granted to the communi-

cies in the Greater Hartford Region during the last fifteen years mitigated this concentration?

A No, it has not. It has, in our view, promoted it.

Q Well, have you provided HUD, HUD's Area Office, in particular, with information over the years pertaining to housing discrimination and segregation within the Hartford region?

A HUD defers complaints to us, that is, housing complaints filed with HUD originally deferred back to the state commission. And we do report back to HUD on the results of those investigations.

So they do have information on all housing cases filed with us. And those housing cases filed with us initially and not with HUD, we also provide the HUD Area Office with reports of those investigations, too.

Q How long has HUD's Area Office been within the City of Hartford, do you know?

A Not exactly, but a number of years.

Q Has it been here at least for the fifteen years you've been with the Commission?

A Yes.

Q Now, what effect, in your expert opinion, has this concentration of minorities and low income individuals within the City of Hartford had on equal housing opportunities?

A Well, equal housing opportunities have been greatly

I think, diminished because of the concentration within the inner city.

I guess you can look at it in terms of cause and effect. I think there are more black and Spanish speaking people in the inner city because of housing discrimination in the region itself. I suspect if there were more open housing policy within the region we would not find as many minorities concentrated in your inner cities.

Q And what effect has this same concentration had on job opportunities?

A Well, given the flight of businesses and industry to the suburban and rural communities of our region, and given the problems of getting to those jobs, you find less and less opportunity for employment in the inner cities.

Q And would you state some of the causes of the concentration of minorities and low income persons within the City of Hartford?

A Well, generally two basic reasons: We see a pattern of segregation within our region, and that's caused by discrimination in housing and employment.

We also see a problem of transportation - the ability to get to the jobs that I just characterized as having more recently been relocated into the suburban and rural communities.

I think the two basic reasons are transportation

problem and discrimination by the rural and suburban towns.

Q So that after fifteen years on the Commission and ten years after --

THE COURT: Wait just a minute. I'm not sure I got that.

The causes of concentration.

THE WITNESS: Again, the causes of concentration of black and Spanish speaking people and poor people in the inner city is due to discrimination by the suburban and more rural communitias, as to housing opportunities and job opportunities more recently.

I said also there's a problem, I think, of transportation not being available now in a mass way to the urban and rural communities where there are more and more job opportunities developing.

Q (By Mr. Zitser) And did you receive any confirmation of the receipt of your reviews of these applications by HUD's Area Office?

A Yes, we did.

Q Was it by letter?

A Yes, we received a letter from the Hartford Area Office, from Frank Buntin.

Q Is this a copy of that letter?

A Yes, it is.

MR. ZITSER: I would like to introduce this as an exhibit, your Honor.

THE COURT: What's that, an acknowledgment of the receipt of something?

MR. ZITSER: Also it contains some comments in regard to the excellent work of the Commission.

THE COURT: Well, we have to have that. Exhibit 8.

(Plaintiffs' Exhibit 8: Letter dated 5/13/75 from Buntin to Green, marked full exhibit.)

BY MR. ZITSER:

Q Now, was all of the information that you've testified to today information which was generally available to HUD?

A Yes, everything that I've commented on.

Q And did you receive any request for further information or substantiation pertaining to the deficiencies that you listed in your reviews?

A No.

Q If all the projects approved in the seven suburban applications are completed will this, in your opinion, lead to the deconcentration of low income persons and minorities within the inner core city of Hartford?

A No. I think they'll lead to a maintenance of the status quo, actually, of the situation.

(Plaintiffs' Exhibit 6: Commission's A-95 review re Farmington, marked full exhibit.)

(Plaintiffs' Exhbit 7: Commission's A-95 review re East Hartford, marked full exhibit.)

THE COURT: Maintain the status quo?

THE WITNESS: The status quo. You know, it will lead to continuing things as they are - perhaps even furthering segregated housing patterns in the region.

MR. ZITSER: I have no further questions.

THE COURT: Before we get to cross-examination:

BY THE COURT:

Q There are two things I referred to, I think, with the previous witness, looking at just this question - whether spending the money that's already been authorized is going to harm the situation, impede the program or diminish the effectiveness of the program. I asked about the storm sewer out in Farmington at Lake Garda - the bigger sewer, anyway, if it is a storm sewer; and about the $25,000 for the park in Rockville.

Now, that's not the whole project, I guess. Is it?

A No. The program under the Act, or the various programs, are much larger in scope than a storm sewer or recreational facilities, sir.

Q Right. But the situation presently before the Court is whether to put a stop to this initial or partial aspect of a program. One of the factors that the Court would want to consider is whether the expenditure of that money would impede deconcentration, whether it would increase concentration.

necessarily do a comparative analysis in measurement.

Q You can't measure to what it is around Detroit or Atlanta?

A We could, but it would not be meaningful for this situation.

THE COURT: All right.

MR. ZITSER: No further questions, your Honor.

THE COURT: All right. I think that's all, Mr. Green. Thank you.

(Witness excused.)

MR. BELLMAN: Your Honor, we just have a word about the rest. We do have a few housekeeping matters we want to resolve with you.

First off, three affidavits that we had the discussion about at the commencement of this hearing that were admitted in to cover testimony that the government said they did not dispute the facts of those affidavits, I think we should mark them as exhibits separately so we can readily refer to them.

MR. vomEICHEN: Your Honor, I don't think we said we did not dispute the facts contained in those affidavits.

THE COURT: Well, I think it was at least suggested by me, and my understanding was, that these

there's been several references made to the Meeker memorandum of May 21. I think it would be best if we simply marked one as an exhibit and called it Plaintiffs' 12. The Meeker memorandum, subject: Estimation of Housing Assistance Needs, dated May 21, 1975.

MR. vomEIGHEN: That's already in the record, your Honor.

THE COURT: I thought we had something in.

MR. vomEIGHEN: Exhibit B, Thompson's first affidavit.

THE COURT: Just a minute.

May 21, '75?

MR. BELLMAN: 1975.

THE COURT: Yes, from Meeker. I have that.

MR. BELLMAN: I understand you have it. There are a lot of documents floating through the record that are not part --

THE COURT: Okay. Let it be marked. It's there.

(Plaintiffs' Exhibit 12: Memorandum of David Meeker dated 5/21/75, marked full exhibit.)

MR. BELLMAN: Finally, the various records, certified records from --

THE COURT: It's marked, Counselor. Get on

L A W R E N C E T H O M P S O N,

called as a witness, being first duly sworn, was examined, and testified as follows:

THE COURT: What is your name?

THE WITNESS: Lawrence Thompson.

THE COURT: Be seated, Mr. Thompson.

What is your business or occupation?

THE WITNESS: Public administration.

THE COURT: What are you - a mayor, a governor, or what?

THE WITNESS: I'm the Area Director of the Hartford Area Office of the U.S. Department of Housing and Urban Development.

THE COURT: Area Director?

THE WITNESS: Yes, sir.

THE CLERK: And your address?

THE WITNESS: 156 Howe Street, Glastonbury, Connecticut.

THE COURT: Now, this area embraces what?

THE WITNESS: My office has jurisdiction for HUD activities within the State of Connecticut.

THE COURT: The State of Connecticut. Okay.

And what is the next region? Is it Regional above you?

THE WITNESS: Yes, your Honor. My immediate

superior is the Regional Administrator in the Boston office of HUD, which has jurisdiction throughout New England.

THE COURT: All right.

DIRECT EXAMINATION

BY MR. EPSTEIN:

Q Mr. Thompson, how long have you been associated with HUD?

A Since February, 1969.

Q Could you review your different positions with HUD?

A From February, '69 until September of 1970, I was a Special Assistant to the Undersecretary of HUD in Washington. From September, 1970 to the present, I've held my current position.

Q What are your present duties as Area Director?

A To provide management and direction for all of the HUD activities administered by the Area Office throughout the State of Connecticut.

Q Does the Area Office have responsibilities under the Housing and Community Development Act of 1974?

A Yes, and specifically with respect to Title 1, which is the important section of the Act here. It's the responsibility of the Area Office to receive, review and take action on the applications submitted by communities pursuant to Title 1.

A Well, the Housing Assistance Plan being one element of the overall application, it was handled generally in the same fashion that I've described here.

Upon an initial review of it for completeness, it was routed to various review elements of the office. And they conducted their reviews, made their comments back to this Central Division.

In many cases there was a need to contact the applicants for clarifications, divisions discussion, and the like.

Q Were there guidelines for their Housing Assistance Plan review also?

A Well, yes, there were. The guidelines for the Housing Assistance Plan review, beyond what's contained in the federal regulations, were set forth in a memorandum from Assistant Secretary Meeker to the field offices of November 29th, 1974.

Q Who was the person who was principally responsible for the review of the Housing Assistance Plans? Was there one person or several people?

A There were several people who participated in the review of the Housing Assistance Plan.

I would say the principal person we looked to was the Area Economist, Mr. Flood. But there were other divisions of the office who participated in the review of that element

identified elements of applications that we felt were at variance with generally known facts, and we got back to the communities and these were resolved.

But at the point of approval I was aware of no instances in which there were generally available significant facts and data that were contrary to those presented in the application.

Q Now, did you intend to waive the Housing Assistance Plan requirement when you required these communities to come up with expected to reside data?

A No. The Housing Assistance Plan requirement is a statutory provision and it's way beyond my power to waive it. Only the Congress could.

We were acting pursuant to Mr. Meeker's memorandum of May to the field offices, which explained that in light of the difficulty all communities across the country were having on this expected to reside element, that communities would be permitted, if they chose, that option to undertake a more extensive survey in conjunction with the development of their second year application.

Q Were the Housing Assistance Plans of these communities complete in all other respects, as far as the tables being completed and filled in?

A Well, they were approvable. They all presented surveys of their housing stock, they all presented an analysis

the applications, that was not regarded by you as a waiver of the expected to reside requirement; right?

A I believe the question that I was asked was was it a waiver of the Housing Assistance Plan.

Q Yes. Well, do you regard it as a waiver of the Housing Assistance Plan?

A No, your Honor.

Q What is this, is it a postponement of enforcement of a condition, or what? Just an extension of time to comply?

A I would call it that, yes. It is certainly not a waiver of a statutory provision, because I would --

Q Well, the money is gone, isn't it, without this further study having been completed?

A We approve the applications and they are drawing on the funds, that's correct. And I think the best way to characterize it is an extension of time with which to deal with a problem that was presented.

Q Well, suppose a further study reveals that the expected to reside factor is completely inconsistent with purposes of the Act. They make a further study and they see, well, we really weren't entitled to this money.

What are you going to do about that? How are you going to get the money back?

A Well, any change in their expected to reside figures would have the result of increasing or theoretically perhaps

decreasing their estimate of housing needs as presented in their Housing Assistance Plan.

It wouldn't have any direct bearing on whether the activities for which they were going to use the money were eligible or ineligible. It would merely vary their estimate of their housing needs.

And given the limited availability of subsidy funds with which to actually undertake low and moderate income housing, it's not even clear to me that it would alter thair housing goals.

It might alter their housing goals, but the ability of the federal government to respond to those stated goals would still be limited by the availability of Section 8 housing dollars.

Q Well, I understand, then, that a zero estimate of expected to reside at this time, even though perhaps doubtfully supported or questionable, doesn't provide any advantage to the towns in the amounts that they received or in the receipt of the amounts they got?

A It does not.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. BELLMAN:

Q Mr. Thompson, I'd like to ask you first, it's true, is it not, that one of the primary purposes of the Housing

We've got the statute that says deconcentration.

We've had a very learned statement from Mr. Davidoff reading into the statute and the congressional history what he thinks it means. I just don't see any purpose in spending time now discussing it with Mr. Thompson.

So let's get down to the --

MR. BELLMAN: We'll get there, your Honor.

THE COURT: You know, is it the paper work we're going to challenge now?

MR. BELLMAN: We'll get there.

THE COURT: Let's get to it. Because I've got a habeas case at two o'clock and we'll have to give them priority, you know.

BY MR. BELLMAN:

Q Well, one final question, then, on the HAP. Would you agree with me, then, that the HAP is a most important feature of the Housing and Community Development Act of 1974?

A I would not agree that it's the most important feature.

Q A most important feature.

A It's an important feature.

Q And you stated on your Direct testimony that it's a non-waiverable feature, isn't that correct?

A I stated that I was not waiving Housing Assistance

Plan in the actions that I took.

Q You stated on Direct, did you not, that it was a statutory requirement that could not be waived? It was your understanding that it was a statutory requirement which could not be waived?

A Other than by Congress itself. Yes.

Q And doesn't that mean, Mr. Thompson, that if a community applies for community development funds and submits an inadequate Housing Assistance Plan, one that you judge to be inadequate, you are foreclosed from approving that application for community development funds no matter what use the applicant proposes for the use of those funds?

A I don't believe that's correct.

Q Well, correct me, please.

A I believe that the scope of review and the review criteria say that I -- or HUD must approve the application, unless there are significant facts and data that are contrary to those presented in the application.

Q Okay. If there are significant facts and data which are contrary to the Housing Assistance Plan, the data in the Housing Assistance Plan, and you are convinced of the significant difference, you are foreclosed from approving that application; isn't that correct?

A That's correct.

THE COURT: Inadequate isn't always contrary to.

It might be a Housing Assistance Plan, not enough, but not necessarily inconsistent with.

Is that what you were trying to suggest? I don't know.

THE WITNESS: Well, your Honor, I was trying to point out that our test of a Housing Assistance Plan is just not one of a vague standard of adequacy or inadequacy - that the regulations and the law prescribe, in very precise language, the standards of review. And I was repeating those standards of review for clarity.

THE COURT: Yes.

BY MR. BELLMAN:

Q Now, you had some discussion with Mr. Epstein concerning affirmative action. It's true, is it not, that the affirmative action requirement emanates primarily from the Fair Housing Act of 1968?

A There are a lot of affirmative action requirements in various parts of our program.

Q Mr. Thompson, you held a Washington post in HUD. Aren't you familiar with the fact that for a very long time people have focused on the Fair Housing Act requirement of affirmative action as a primary congressional goal?

A Well, yes, indeed. But I understand also that affirmative action in employment is rooted in Executive Order

11246, which is another phase of affirmative action. So I didn't want to characterize all forms of affirmative action as being rooted in the 1968 Act.

Q In terms of housing opportunities, if we're talking about affirmative action, that emanates primarily from the 1968 Act?

A That's correct.

Q And would you agree with me that that is a very important civil rights obligation imposed upon HUD?

A Yes.

Q And would you agree with me that in administering the Housing and Community Development Act of 1974 HUD had an obligation to act affirmatively in accordance with the dictates of the 1968 Act to accomplish equal housing opportunities?

A I'm not clear on to what degree. Our basic reference point for administration of this program was the law of 1974 and the regulations and other instructions that were received in the field offices to administer that program.

Title 8 of the 1968 Act is covered in our administration of this program primarily through the certification that we receive and accept from the applicants.

THE COURT: I think you are still discussing with this witness an interpretation of the law and the purposes that's more properly left for decision

by the Court.

Q (By Mr. Bellman) Mr. Thompson, what is the Equal Opportunities Division of HUD, what is their responsibility overall?

A In the Area Office?

Q Well, all right, in the Area Office.

A In the Area Office there is an Equal Opportunities Division, which is one of several of the organizational components of the office. It has a staff of three persons; two professional and one non-professional.

Their responsibilities are to advise me and other members of the staff with regard to equal opportunity matters and to work with communities and housing sponsors and others, in the administration of our civil rights and equal opportunity provisions.

THE COURT: There you go.

Q Would the review of the Housing Assistance Plan involve equal opportunity aspects?

A Yes, it would. And the Equal Opportunity Division of the Area Office reviewed each application.

Q Now, picking up on some of the questions that the Judge asked you with respect to the waiver, as I understand your testimony you did not waive the requirements of the HAP with respect to the expected to reside requirement, is that correct? Is that your position?

A The position was that we did not waive any statutory requirement.

Q So when you approved a zero expected to reside figure for a given applicant you were concluding that there were no significant facts and data available to you contrary to the data contained in the application?

A That's correct.

Q Prior to May 21, 1975, when you received the Meeker memorandum, were you proceeding on the assumption that the towns and the applicants were going to be held to the standard of providing an expected to reside figure?

A Other than zero?

Q Other than zero? All right, other than zero.

A We were proceeding on the assumption that they would make efforts to fill out that portion of the application with whatever data they had available to them.

Q It's true, is it not, that you approved the East Hartford application prior to the May 21, 1975 Meeker memorandum? Isn't that correct?

A I believe that's correct, yes.

Q And you approved a plan in that case which called for a zero expected to reside figure prior to any Meeker memorandum?

A I believe that's incorrect.

Q Isn't it true that you approved the East Hartford

THE COURT: What difference does that make? I don't understand this.

What is the point of this?

MR. BELLMAN: Well, in his affidavit, your Honor, he does refer to the severe time pressures imposed by seventy-five days.

THE COURT: Well, if you want government action in seventy-five days you automatically are confronted with severe time pressures. Haven't you run into that yet?

So I mean I don't see any significance in his view that it was a time pressure.

Congress said do it in seventy-five days, or else.

BY MR. BELLMAN:

Q The 1974 Act was adopted on August 22, 1974, isn't that correct?

A That's correct.

Q You were aware of that Act from the outset, I take it?

A Yes.

Q When did you first read it?

THE COURT: Do you want to tell me what this has got to do with our case?

MR. BELLMAN: Yes, your Honor. I believe it

is important to establish that HUD was focusing on this Act from the very beginning and it wasn't just the period after the application.

THE COURT: I don't care about that.

What didn't they do that they should have done, or what did they do that was wrong? Let's get down to the facts here, not the attitudes or the problems that the employees had of being overworked.

Q (By Mr. Bellman) Mr. Thompson, it's true, is it not, that the various people responsible for the reviews in your Area Office were briefed by higher officials, either in Boston or perhaps even Washington, with respect to the review process, isn't that true?

A More with respect to the contents of the law and the regulations than with respect to the review process, per se.

But, yes, members of the Area Office staff all received training and briefings on the 1974 Act.

Q When was this carried out?

A Well, beginning, I think, in September of 1974, and continuing on well into the winter of 1974-75.

Q This was a continual process throughout the fall of 1974?

A Well, it was ongoing. I wouldn't describe it as continual being without interruption. But it was an ongoing

process, familiarity.

THE COURT: Are you leading up to something specific?

MR. BELLMAN: Yes.

THE COURT: Well, why don't you jump right at it. What is it?

MR. BELLMAN: Your Honor, I will. I mean I'll try to move through it.

Q With respect to the Town of Glastonbury, you approved that application, did you not, with a zero expected to reside figure?

A I believe that's correct.

Q In that case it's true, is it not, that the applicant set forth some figures with respect to the numbers of persons who were working in the town, residing outside the town, and would qualify for Section 8 housing, isn't that correct?

A Their Housing Assistance Plan presented some preliminary figures along those lines.

Q And wasn't the figure 806 workers?

A I believe that's correct.

Q That it expressed an interest in living in Glastonbury?

A Well, I don't know if they had expressed an interest, but that was --

Planning and Development Director, the Director of the Division, in which he and his staff set forth the negative review comments in summary form and made comment on them on an item by item basis.

Q And is that, in the West Hartford case, the memorandum dated June 24, 1975?

A That's correct.

Q And then several days later you approved the grant, is that correct?

A That's correct. And there may have been some discussions and meetings intermingled during that time period.

Q The date of your approval is June 27, is that correct?

A That's correct, from the record. Yes.

Q Now, so the record is precise on this question, when you approved the West Hartford grant you, in effect, concluded that there were no significant facts and data available with respect to the expected to reside figure in the West Hartford application, which was zero, to indicate that the application was contrary to the law, is that correct?

A That's correct.

Q What facts and data do you believe your own people were relying upon when they concluded that the application was inadequate as to the Housing Assistance Plan?

A The kinds of data that are available to the various reviewers would be hard for me to describe and summarize.

They have census data available to them, various other statistical compilations from other departments of government, some planning studies have been done under prior HUD programs, a variety of data hard to describe in any summary form.

Q But you concluded that the data that they relied on was not significant?

A I don't believe in any of those review comments it expressly said that they had significant facts and data to challenge the zero expected to reside of West Hartford.

Q Well, the City of Hartford, for example, challenged the expected to reside figure. Did you consider or conclude that the information provided by the City of Hartford was insignificant?

A We concluded that the comments of the City of Hartford, with respect to West Hartford, did not contain significant facts and data generally available that would have permitted a challenge to the West Hartford application.

Q Mr. Thompson, I want to show you a copy of a memorandum from your superior, Harold Thompson, to you dated April 30, 1975. Are you familiar with that memorandum?

A Yes, I am.

THE COURT: Counselor, do you contend that on the basis of what was before the Area Director here, that there was a clear violation of the re-

ingly, in the event that you decide to approve any or all of the applications we urge you to document your determinations in order that the Department will be in a position to defend the reasonableness of your decisions in any such litigation."

Q Now, would you read the last paragraph on the second page.

A "In sum, these allegations are, in our opinion, well documented and of a very serious nature. Therefore, whatever your decision may be regarding this matter, please ensure that the administrative file reflects a reasonable decision making process."

MR. BELLMAN: We would like to move the admission of this document.

THE COURT: What is it?

MR. BELLMAN: Memorandum from Harold Thompson, Regional Administrator, to Mr. Lawrence Thompson, "Challenge by Common Council of the City of Hartford to CD Applications Within the Hartford SMSA."

THE COURT: That's the paper he just read from?

MR. BELLMAN: Yes.

THE COURT: All right. Admitted.

(Plaintiffs' Exhibit 13: Memorandum from H. Thompson to Lawrence Thompson dated 4/30/75,

quest additional information on the charges made by the various agencies and your own staff people?

A It was our responsibility to evaluate these comments against the standard set forth in the regulations, which was whether they presented significant facts and data that were at variance with the applicants. And they did not.

Q So you didn't feel there was any need on your part to request further investigation?

THE COURT: Well, he made the judgment. That's what he did. You know that. He approved it.

MR. BELLMAN: All right.

Q Mr. Thompson, wasn't there available to you substantial information on the employment growth in the Town of West Hartford, or any one of these towns, which would have assisted you in reaching a judgment as to the expected to reside figure?

A There may have been information available to members of my staff regarding this kind of information. I'm not sure if they had it immediately available in their files or not.

But I would not regard that information alone as sufficient to permit us to come up with a substitute figure for the figures presented in the applications.

Q Mr. Thompson, let me show you a copy of a letter that you signed. Could you tell me to whom that is directed?

It is precisely the type of approach we said should have gone on in this case. Mr. Thompson, in 1972, followed that approach. Now he says the claim is they say it's not possible.

THE COURT: Make it an exhibit.

(Plaintiffs' Exhibit 14: Letter dated 4/9/74 from Thompson to Flis, marked full exhibit.)

THE COURT: Next question.

BY MR. BELLMAN:

Q Now, you made the statement with respect to the Housing Assistance Plan that the use of the Section 8 monies had been exhausted and, therefore, the Housing Assistance Plan figures were, in your estimation, accurate. Is that a fair statement of your position?

A I said they were realistic.

Q Realistic.

Isn't it true, Mr. Thompson, that the Housing Assistance Plan performs a function far beyond the question of Section 8 monies?

A The Housing Assistance Plan is a plan which sets forth the community's goals for assisted housing which is subsidized housing, not only for Section 8 but for any other available subsidy programs.

Q Is it only for assisted housing?

THE COURT: Subsidized.

significant and was a basis for making these determinations of estimated needs and of expectancies. So all he can do is have an opinion as to whether there was such data available.

MR. vomEIGHEN: Right.

I want to make it clear at the time of approval was it his opinion that that data was available.

A In my judgment at the time there was no such data available in which we could make any finding other than approval.

MR. vomEIGHEN: Thank you very much, your Honor.

MR. EPSTEIN: Your Honor, may I ask one question?

THE COURT: Yes.

MR. EPSTEIN: Do you want the government to resubmit the exhibits previously submitted in support of our Motion for Summary Judgment to be made a part of this record? Is that necessary?

We had submitted previous affidavits and exhibits.

THE COURT: I will declare now that affidavits previously submitted in support of the Motion for Summary Judgment and the exhibits attached thereto are exhibits in this case.

mean you are entitled to your injunction either.

MR. BELLMAN: That is correct.

That is why if they are going to rely on Flood in any substantive way past summary judgment --

THE COURT: I'll take a look at it.

MR. BELLMAN: It is not in evidence.

THE COURT: And if we get to that point in this case, then I will communicate with counsel about setting up a time for taking additional evidence.

But I'm not going to take the time now to examine the Flood affidavit and to come to a ruling on Motion for Summary Judgment in order to decide whether, on face with a hearing on the merits, whether on that hearing on the merits I can consider that evidence.

MR. BELLMAN: On the record, we object to the use of the Flood affidavit for any purposes other than consideration of the government's Motion for Summary Judgment.

THE COURT: All right.

MR. vomEIGEN: Thank you, your Honor.

THE COURT: Now, wait a minute.

So with respect to the function of the Court now, do you gentlemen propose to offer any further

satisfied that bond requirement.

THE COURT: No, apart from that, what is really involved? Is there money floating around? Has somebody got their hands on money that's being spent?

MR. BELLMAN: Perhaps the witness knows.

THE COURT: Well, I don't know.

Do you know? What do you want stopped?

MR. vomEIGHEN: Your Honor, except for the community of Glastonbury, each community has a letter of credit. With that letter of credit they can draw directly from the treasury on an account of the treasury to the full amount of the grant which was approved by the Department.

We do not review those requisitions from the treasury prior to the time in which they are made. We gave you a status several weeks ago.

THE COURT: All right.

So you don't know any more than that?

MR. vomEIGHEN: Right.

THE COURT: That they have clearance, so far as the government is concerned, to go out and get the money and spend it.

MR. vomEIGHEN: In six out of the seven communities.

MR. ZITSER: Your Honor, they certified in their original memorandum in opposition to the preliminary injunction that some of these monies already had been drawn.

THE COURT: Yes.

MR. ZITSER: And I have had some of the attorneys from the other towns contact me to indicate that they - and this was fifteen or sixteen or seventeen days ago - that they intended to draw their monies as soon as possible.

So the monies are flowing now and will continue to flow, unless this Court grants us temporary relief.

MR. vomEIGHEN: On the other hand, your Honor, Section 111 of the Housing Community Development Act would find that if there were any expenditures for improper purposes or in violation of the law, there are set established procedures for recovering that money or deducting the money from next year's entitlement grant, in the event that it was inappropriately approved or misapplied by the particular community.

THE COURT: What are you referring to?

MR. vomEIGHEN: Section 111(b) 53.11 -- 4253.11.

I suggest to you the plaintiffs have failed

A 330

PLAINTIFFS' EXHIBIT 1

MEMORANDUM FROM GLORIA E. A. TOOTE, EQUAL OPPORTUNITY,
HUD RE EQUAL OPPORTUNITY APPLICATION REVIEW GUIDE
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

HUD-UA (4-72) PREVIOUS EDITION MAY BE USED

Memorandum

U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

TO : ALL REGIONAL ADMINISTRATORS
Attention: ASSISTANT REGIONAL ADMINISTRATORS FOR
EQUAL OPPORTUNITY

DATE: December 19, 1974

IN REPLY REFER TO:

FROM : Gloria E. A. Toote, Equal Opportunity, E

SUBJECT: Equal Opportunity Application Review Guide and Checklist for FY 1975 --
Community Development Block Grant Program

With the assistance of four EO staff persons from the Field, my Office of Policy Development prepared the enclosed Review Guide and Checklist for Community Development Block Grant Applications. We hope it will be useful to you in the coming months.

As you will note, it is dated FY 1975. It is designed specifically for use during the first year of the CD Block Grant Program. After we have a chance to study application submissions and programs for the first year, together with the institution of a monitoring system, we will be revising the application review guide for the subsequent year. We welcome your comments and suggestions as to its use and possible modifications.

Thomas O Kenkam
Act. Sec.

Assistant Secretary

Enclosure

cc:

Area Office Directors
Attn: EO Directors

A 331

Plaintiffs' Exhibit 1

EQUAL OPPORTUNITY APPLICATION REVIEW GUIDE FOR FY 75

Community Development Block Grant Program

I. Preparation by EO Staff

Congress intended to limit the amount of front-end review of applications. Consequently, reviewers will for all practical purposes be scanning applications rather than conducting in-depth reviews, to ascertain whether it is consistent with known facts (i. e. census data, court decisions, etc.). In order for Equal Opportunity to quickly make this determination, a prior knowledge of the special needs of any identifiable segment of the total group of low-income persons in the community (i. e. minorities and women) is necessary.

Resources for data are:

1) U. S. Census, Series PHC-1 and PHC-3

2) Maps previously submitted by applicants such as those included with:

   a. Instructions for compliance with Title VI for the Neighborhood Facilities Grant Program (HUD 41906), Public Facility Loan Program (HUD 41905), and the Open Space Land Program (HUD 41907).

   b. Workable Program Submission.

   c. Recent 701 studies relating to eligible activities under CD Block Grants.

   d. Community Renewal Programs which illustrate community needs and/or delivery of existing facilities or services.

   e. Public Housing applications.

3) ~~Information and maps~~ available from EMAD

4) Publicly available studies by public interest groups, universities, planning commissions and areawide planning organizations.

II. Community Development Plan Summary

A. Statement of Needs

This section should be reviewed to ascertain whether the application addresses special needs existing in "any identifiable segment of the total group of low-income...

(minorities and women) in the community." (Section 570.303 (a)).

An overall view of the above need is generally ascertainable from the Census (PHC-1) which contains data relative to the general and socio-economic characteristics of major minority groups and some data on female-headed families. This data can be supplemented by the data which you have gathered in preparation for reviewing the application.

In reviewing to determine whether the needs of the identifiable segment have been noted, keep in mind that the applicant may address the needs without specifically identifying them. For example, the applicant may simply state "need to bring homes up to minimum housing code in Census Tracts 23, 24 and 25, and to provide adequate public facilities." A quick glance at Census (PHC-1) could reveal that these homes are in a low-income area and in an area predominantly populated by minorities.

An application which does not identify needs existing in census tracts which contain significant numbers of lower-income minorities and women heads-of-household (when known facts clearly indicate needs in these areas) may be rejected by the Secretary on the grounds that it is plainly inconsistent with known facts.

B. Long and Short Term Objectives

These objectives should be scanned to assure that they address the needs of low-income persons, including minorities and women, as they were identified in the applicant's Statement of Needs. An application which does not address any of the needs of the identifiable segment of the lower income population identified in the Statement of Needs, may be rejected by the Secretary on the grounds that it is plainly inappropriate to meeting the needs and objectives identified by the applicant or does not comply with the requirements of the nondiscrimination regulations (§570.601).

III. Community Development Program

Review of HUD Form 7015.1, Community Development Program, should focus on Items 1, 2 and 4 together with the required map(s) which must show location by census tract of planned activities, to determine whether the activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant.

Example: A community identifies its needs and objectives for an area which include rehabilitation, [illegible] proposed activity for that area, however, [illegible] or objectives.

Review should also ascertain whether activities are proposed for census tracts with concentrations of low-income minority or female-headed households. Absence of activities in these census tracts are not necessarily reasons for rejection; however, Equal Opportunity staff should make a "note to file" for use in application review in subsequent years.

IV. Housing Assistance Plan

Equal Opportunity staff shall review the Housing Assistance Plan, especially the map, showing the concentration of minority and low-income groups in the various census tracts or enumeration districts which make up the geographic boundaries of the applicant to ascertain if the general location of proposed housing substantially impairs the achievement of the following specific objectives:

(1) The reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods to attract persons of higher incomes [Section 570.2(6)].

(2) Promoting greater choice of housing opportunities and avoiding undue concentrations of assisted housing in areas containing a high proportion of low-income and/or minority persons. [Section 570.303(c)(4)(ii); 570.601(b)(3); and Title VI].

For example, a Housing Assistance Plan from a city where all existing housing is in low income and/or areas of minority concentrations proposes housing as shown on the general location map to also be located in such areas. In this case, the reviewer must find that the application does not comply with the requirements of the Act and the Regulations (S570.306(b)(2)(iii)) and should recommend disapproval.

Since review time will be very limited, Equal Opportunity staff should begin immediately to develop assisted housing location profiles on heavily minority and low-income populated entitlement cities.

A 334

Plaintiffs' Exhibit 1

REVIEW CHECKLIST

EQUAL OPPORTUNITY -- FISCAL YEAR 1975

		YES	NO
1.	Equal Opportunity certifications are included and properly executed. (If they have been retyped, make sure that they are accurate. If they are inaccurate or incomplete, return the application to the appropriate person immediately.)	____	____

COMMUNITY DEVELOPMENT PLAN AND PROGRAM

2.	The community contains identifiable segments within the low-income population: (EO Staff determination)		
	Minorities (specify)_____	____	____
	_____		
	_____		
	Female-headed Families	____	____
3.	The Community Development Plan Summary -- Statement of needs -- identifies special needs known to exist in any identifiable segment of the low-income population.		
	Minorities (specify)_____	____	____
	_____		
	_____		
	Female-headed Families	____	____
4.	The Community Development Plan Summary -- Short-term Objectives -- takes into consideration special needs of identifiable segments within the low-income population		
	Minorities (specify)_____	____	____
	_____		
	_____		
	Female-headed Families	____	____

NOTE: It is conceivable that an applicant could have valid reasons for not programming activities that meet the needs of minorities and female-headed families until 2nd or 3rd year. Therefore a "no" is not necessarily a cause to recommend disapproval.

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Plaintiffs' Exhibit 1

2.

	YES	NO
5. The Community Development Program contains activities for meeting needs of:		
Minorities (specify)_____	___	___
_____		
_____		
Female-headed Families	___	___
HOUSING ASSISTANCE PLAN		
6. The Housing Assistance Needs of Lower-Income Households (HUD 7015.9) identifies the needs of minority households known to exist.	___	___
** 7. The indicated general location of proposed housing for lower-income persons promotes greater choice of housing opportunities.	___	___

** Equal Opportunity Staff should recommend disapproval if the answer to these questions is "no." (Disapproval by EO Staff does not imply disapproval by HUD, since the application may be approved regardless of the recommendations by EO Staff.) Such disapproval or request for additional information that is absolutely necessary should be documented and delivered to the appropriate person (as per your area office procedures) within five days of reciept of the application!

RECOMMENDATION:

_____ Disapprove: The applicant is deficient in categories (3), (4) and/or (7) above.

_____ Approve: The applicant is not deficient in the above categories.

_____ Other: Request for more information only where absolutely necessary to complete review.

Reviewed by _____ Date _____

Approved by _____ Date _____

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PLAINTIFF'S EXHIBIT 2

HUD INSTRUCTIONS FOR COMPLETION OF FORM FOR HOUSING ASSISTANCE PLAN

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HOUSING ASSISTANCE PLAN

INSTRUCTIONS FOR FORM HUD-7015.8 thru 11.

GENERAL INSTRUCTIONS

The Housing Assistance Plan section of the Community Development Block Grant application consists of four forms and a map, with narrative explanations, showing, respectively: I. Survey of Housing Conditions; II. Housing Assistance Needs of Lower Income Households; III. Annual Goal for Housing Assistance; and IV. General Locations for Lower Income Housing.

Applicants are required to complete all portions of the forms, except for columns indicated as optional. The first year's application should be completed using already available data or, as necessary making responsible estimates based on defensible estimating procedures. Data should be drawn from generally available materials, published or unpublished, that are readily accessible to the applicant and to HUD. These include materials from the Census Bureau; records of code enforcement agencies; records of other local agencies; 701 plans; reputable research, community service, or planning organizations; and the materials prepared by HUD as described below. Data sources, reference dates, and methods of estimation should be supplied for each entry of required information. For submissions in subsequent years, applicants are encouraged to develop improved and additional data and information suited to the requirements of the Housing Assistance Plan.

Unless otherwise defined in these instructions, definitions with regard to housing and occupancy characteristics are those employed by the U. S. Bureau of the Census.

HUD Area Offices are prepared to provide certain data and guidance to applicants requesting their assistance. Specifically, data and estimates are available for all entries on Table I and for lines A.1, A.2, and A.3. of Table II. Applicants desiring this assistance should contact the Director of the HUD Area Office serving its locality.

In Items 1 through 4 on each form enter:

Item 1 **Name of Applicant.** Enter the name of the unit of general local government as it appears in the Application for Federal Assistance, Part 1, Item 4.

Item 2 **Application Number.** Enter the assigned application number.

Item 3 **Original - Amendment.** Check "Original" box if this is the first such table submitted for the current year in the Housing Assistance Plan; otherwise, check "Amendment" box.

Item 4 **Program Year.** Leave blank.

The information required in the table is largely self-explanatory. Detailed instructions are provided just for those items requiring further explanation. Unless otherwise noted, components are additive to the totals indicated.

SPECIFIC INSTRUCTIONS

I. SURVEY OF HOUSING CONDITION (HUD-7015.8)

Basic Requirement

The plan must describe the condition of the housing stock in the community. There should be a summary description of the total number of year-round units, identifying those in substandard condition, and to the extent information is available, units suitable for rehabilitation, and in each case distinguishing those which are occupied and which are vacant.

Section A. **Substandard.** The applicant should adopt a definition which conforms to the broad understanding of the term locally. A suitable, but not mandatory, definition would include units lacking some or all plumbing facilities and/or dilapidated. (The 1960 Census of Housing defines "dilapidated" housing as that which does not provide safe and adequate shelter. It has one or more critical defects, or has a combination of intermediate defects in sufficient number to require extensive repair or rebuilding, or is of inadequate original construction.)

Section B. **Suitable for rehabilitation.** Applicants are encouraged to develop means of estimating the numbers of housing units both privately and publicly owned which can be economically repaired or improved in order to bring them up from a less than acceptable condition to a locally acceptable standard condition. In determining suitability and feasibility for rehabilitation, consideration should be given to neighborhood conditions, including quality of public facilities, adverse land uses, and crime, traffic and health conditions.

II. HOUSING ASSISTANCE NEEDS OF LOWER INCOME PERSONS (HUD-7015.9)

Basic Requirements

The plan must contain estimates of the housing assistance needs of lower income households either already residing in the community or expected to reside in the community as a result of planned or existing employment opportunities. Separate estimates are required of assistance needs of: elderly and handicapped households; large size (4-or more minors) households; and households displaced or to be displaced. The estimates should take into consideration any special needs (such as special minority group requirements) found to exist in any segment of the total group of lower income persons in the community.

Basis for Estimating Housing Assistance Needs

Estimates of housing assistance needs should be based primarily on the estimated number of lower income households that spend, or would have to spend, an excessive proportion of income in order to afford adequate, non-luxury housing which is decent, safe, and sanitary and suited to their household requirements. Estimates should not be excessive: they should recognize that some lower income households occupy adequate housing without spending an excessive proportion of income. Estimated needs should exclude households requiring, but already receiving, an adequate level of housing assistance. Need estimates may be based on the income eligibility requirements established by the Secretary of HUD for the Lower Income Housing Assistance Program, (i.e., families whose income does not exceed 80 percent of median income for the area, with adjustments upward and downward for larger and smaller families, or other limits established by HUD because of construction cost levels or for other reasons).

Columns

Black; Spanish (or other). Complete these columns if five percent or more of the households in the locality comprise a single group that is of Spanish heritage, or Black, or of other racial origin. If data are shown for a group other than Black or Spanish heritage, identify the group. Attach extra forms for additional groups that comprise five percent or more of the households in the locality.

Rows

Separate (additive) estimates are to be made of needs, during the one year (and optional three year) goal period, of lower income households:

Section A. **Currently residing in the locality,** excluding those displaced or expected to be displaced.

Section B. **Displaced or expected to be displaced,** due to clearance, demolitions, major rehabilitation, or other reasons.

Section C. **Additional households expected to be residing in the locality,** (net of those expected to leave) taking into account changes in employment and population, and other demographic and labor market changes.

The sum of these three components consitutes the locality's total housing assistance needs during the period(s) covered.

III. ANNUAL GOAL FOR HOUSING ASSISTANCE (HUD-7015.10)

Basic Requirement

The plan must specify a realistic annual goal for the number of dwelling units to be assisted, using Federal or other available housing assistance resources, taking into consideration the housing conditions and needs described in the first two parts of the plan. Goals must separately identify the proportion of new, rehabilitated, and existing dwelling units, and the

sizes and types of dwelling units that need to be assisted, taking into account the kinds of assistance best suited to the needs lower income persons in the community.

Columns

Goal Period. There must be a one-year goal describing planned numbers of assisted units. The year should coincide with the first year program described elsewhere in the Community Development Block Grant application. To provide a longer term framework for the annual goal, applicants are encouraged, but not required, to prepare the one-year goal within the context of a three year planning period which coincides with the three-year plan prescribed elsewhere in the application.

New, Existing, Rehabilitated Units. Goals for new, rehabilitated, and existing units must be consistent with the findings regarding the availability of vacant existing units and of units suitable for rehabilitation. Goals should reflect the maximum feasible use of the existing housing stock in accordance with generally known data, taking into consideration that HUD priorities for use of the Section 8 Housing Assistance Program emphasize the use of existing housing. The distribution of assistance between new and rehabilitated units should be made taking into consideration the objectives of: curtailment of housing deterioration; promotion of meighborhood stability; minimizing detrimental environmental impact; avoidance of undue concentrations of low income and minority group persons; and economic feasibility.

Rows

Section A. Show the (additive) components of housing assistance goals in terms of the types of households that will be assisted.

Section B. Indicate anticipated sources of assistance, in terms of numbers of housing units, to meet the goals established in Section A. Potential sources of assistance include Federal programs such as the Section 8 Lower Income Housing Assistance program, programs administered by the Farmers Home Administration, the use of Block Grant funds for rehabilitation, and general revenue sharing funds. State and local government as well as private, programs may also be employed. Applicants are encouraged to use existing programs, and to develop new programs, that are suited to the housing needs of their locality.

Line B.1.a. should identify first the goals for assisted units using the Section 8 Lower Income Housing Assistance program. The following line should show the dollar amount of annual assistance payments that would ahve to be contracted for during the one year goal (and, optionally, during the three year planning period) in order to accommodate the number of Section 8 program units indicated. If the applicant knows anticipated plans by a State agency to utilize the Section 8 program in the locality, such State agency amounts should be included in lines B.1.a. and separately explained in Section C of Table III.

Goals for using Section 8 Lower Income Housing Assistance payments must be consistent with the amount of such resources currently available, at the time the plan is prepared, to the HUD field office in the aggregate and to the geographic area of which the locality is a part. HUD offices will make known the aggregate amounts of Section 8 Program assistance available for their respective jurisdictions, and in addition, upon request, will indicate the general range within which the ultimate authorization for an individual geographic area may be expected to fall. This preliminary estimate will be based on a statistical "Fair Share Measurement" of housing assistance needs in the geographic area. Applicants should be aware that in making the final authorization for individual geographic areas, the field office will consider, in addition to the statistical Fair Share Measurement, the contents of available local Housing Assistance Plans and any other information bearing upon the housing needs in an area which may be brought to its attention by the applicant or by others.

Section D. The plan should be accompanied by a brief narrative explanation of what housing needs priorities are reflected in the goals prescribed and the basis for setting these priorities.

IV. GENERAL LOCATIONS OF LOWER INCOME HOUSING (HUD-7015.11)

Basic Requirement

The plan must indicate general locations of proposed housing for lower income persons. Such locations must be selected with the objective of:

(a) furthering community revitalization, including neighborhood restoration and rehabilitation;

(b) promoting increased housing choices for low income persons and avoiding undue concentrations of assisted housing in areas containing a high proportion of low income persons;

(c) assuring the availability of public facilities and services adequate to serve proposed housing projects.

Map and Supporting Materials

The basic requirement may be met by indicating, on maps as called for elsewhere in the Block Grant application requirements, listing general locations by Census tract or groups of Census tracts of planned new and rehabilitation projects for lower income persons, and a narrative explanation, to be provided in Table IV, of how the locations will serve to meet the above objectives.

In selecting general locations for HUD assisted housing, in addition to the basic requirements, consideration should be given to:

a. The site and neighborhood standards established by HUD for the Housing Assistance Payments Program.

b. The availability, in the locations designated, of units suitable for rehabilitation and sites suitable for new construction, in amounts consistent with the plan's goals for rehabilitated and newly constructed housing. The general locations indicated should be of sufficient size and number to enable a reasonable degree of flexibility in selecting specific project sites, and to avoid unduly limiting the availability of sites for otherwise acceptable assisted housing projects.

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PLAINTIFFS' EXHIBIT 4

LETTER FROM JOSEPH S. VERA, HUD TO ARTHUR L. GREEN
CONN. COMMISSION ON HUMAN RIGHTS, DECEMBER 10, 1974

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203

December 10, 1974

REGION I

IN REPLY REFER TO:

Arthur L. Green, Director
Conn. Commission on Human Rights and Opportunities
90 Washington Street
Hartford, Connecticut 06115

Dear Mr. Green:

I am enclosing for your information, copies of the Federal regulations pertaining to the Housing and Community Development Act of 1974 (Pub.L. 93-383) Title I (Community Development Block Grants) and a list of entitlement communities in your state. As you know, this new legislation consolidates a number of HUD programs such as Urban Renewal, Model Cities, Open Space, Public Facilities, and Rehabiliatation Loans. It provides for an unprecedented degree of local control in the administration of Federal funds and for minimum review by HUD of proposed programs at the application stage. The emphasis on minimal Federal control in the legislation makes the role of State Human Rights Agencies of Critical importance in monitoring Equal Opportunity aspects of Community Development Programs and Housing Assistance Plans.

The new Act contains a number of provisions to promote equal opportunity, but these provisions apply only to the conduct of the program once it is under way. Cities applying for Block Grants shall certify that the program will be conducted in accord with Federal Civil Rights laws and regulations. Although all prior Civil Rights laws apply, there is no direct provision within the Act itself to assure that the applicant city, the planning arm, or municipal subdivisions which will be involved in execution of the program are in compliance with equal employment of equal housing opportunity laws at the time the application is made. In addition, while there will be some monitoring of performance under the program, the major emphasis will be on year-end review.

The implementation of Equal Opportunity requirements pursuant to prior Federal Civil Rights Statutes and Executive Orders which relate to Community Development programs will be particularly complicated during the transitional period of first year funding. Therefore, it is important that agencies such as yours have a thorough understanding of the new Act and make full use of the A-95 review procedure to comment on the applications which will be submitted from communities in your state.

2.

Hud Area Equal Opportunity offices will have to rely heavily on the data contained in Human Rights Agency A-95 comments in the application review process this year. You will notice that the Regulations prescribe very narrow grounds on which applications can be rejected and a very limited time for the entire review process. Applications will be accepted as of January 1, 1975 and must be processed within 75 days. Request for advance of funds for planning purposes may be approved as of January 1. Advances may be approved without certification from the applicant that it is in compliance with Civil Rights law.

It would be most helpful if you would notify this office no later than January 1, 1975 of any findings of discrimination made by your agency against entitlement cities, city agencies or municipal subdivisions which might be involved in community development programs. We would also appreciate your alerting us to any private civil rights litigation you may have knowledge of involving entitlement cities, city agencies, or municipal subdivisions.

We hope to work closely with you to insure that applicant cities incorporate full consideration for national equal opportunity goals into projects and activities funded under the Community Development Act. We hope that by establishing a cooperative effort at the outset we can avoid any tendency for equal opportunity matters to be subordinated to the pressures of adapting to a new system in a very short period of time.

Although the chief responsibility for application review will be in the HUD Area Offices and HUD Area Office Equal Opportunity Directors will doubtless be in touch with you in the near future, the Regional Office of Equal Opportunity continues to have full responsibility for compliance matters. Please do not hesitate to contact us if we can be of assistance in interpreting the new Act or if we can be helpful with respect to A-95 procedures.

Sincerely,

Joseph S. Vera

Joseph S. Vera
Assistant Regional Administrator
for Equal Opportunity

Enclosures

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PLAINTIFFS' EXHIBIT 5

LETTER DATED JANUARY 16, 1975 FROM BURTIN TO GREEN

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

AREA OFFICE
999 ASYLUM AVENUE, HARTFORD, CONNECTICUT 06105

AREA OFFICES
Boston, Massachusetts
Hartford, Connecticut
Manchester, New Hampshire

REGION I
REGIONAL OFFICE
BOSTON, MASSACHUSETTS

January 16, 1975

IN REPLY REFER TO:
1.2E

Mr. Arthur L. Green, Director
Connecticut Commission On Human Rights And Opportunities
90 Washington Street
Hartford, Connecticut 06115

RE: Racial Statistics And Information For
Community Development And Block Grant Reviews

Dear Art:

As the applications for Community Development and Block Grants are received by the Hartford Area Office, Equal Opportunity will need racial statistics on cities and towns who are making application. I am requesting from your office any racial data that you have that may assist us when looking at applications that are submitted. I will have on hand the 1970 Census Data. As you know, this does not give any information in regard to the Spanish-Speaking population.

If you have such data, we would greatly appreciate having it on hand when reviewing applications. (Please include racial data - women).

I have enclosed HUD's list of eligible cities and towns for your information.

Happy and smooth sailing with the new administration.

Sincerely,

Frank H. Buntin

Frank H. Buntin
Director
Equal Opportunity

ENCLOSURE

A 343

Plaintiffs' Exhibit 5

HUD-565 (4-72) PREVIOUS EDITION MAY BE USED

Memorandum

U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

TO : See Distribution List

DATE: December 26, 1974

IN REPLY REFER TO:

FROM : Daniel P. Kolesar
Operations Division

SUBJECT: Revised Designation of Program Representation For Entitlement Cities Area "A"

The recent addition of two more entitlement communities; 1. Town of Greenwich, and 2. Town of Fairfield necessitates a revision of my memorandum of December 17, 1974 to include these communities in the Program Representatives assignments.

Any requests for information relative to the Housing Community Development Act of 1974 should be referred to the following:

Mary Ellen Morgan

Danbury Westport
Derby
Norwalk
Stamford
Stratford
East Haddam
Middletown
Portland
Greenwich

Robert S. Donovan

Ansonia
Bridgeport
East Haven
New Haven
West Haven
Meriden
Milford
Fairfield

Director
Operations Division

Distribution

Thompson
Black
Flood
Kolesar
McMahon

Anderson
Reese
Lennox
Donovan

Morgan
Gutekenst
Gelletich
Buntin

DeSipio
Cameron
Wilson
Cleveland
Jensen

A 344

Plaintiffs' Exhibit 5

PROGRAM MANAGEMENT DISTRICT B

ENTITLEMENT CITIES

BLOOMFIELD

BRISTOL

EAST HARTFORD

ENFIELD

FARMINGTON

GLASTONBURY

HARTFORD

MANCHESTER

NEW BRITAIN

NEW LONDON

NORWICH

SUFFIELD

VERNON

WATERBURY

WEST HARTFORD

WILLIMANTIC

WINDSOR LOCKS

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PLAINTIFFS' EXHIBIT 8

LETTER DATED MAY 17, 1975 FROM BURTIN TO GREEN

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

AREA OFFICE
999 ASYLUM AVENUE, HARTFORD, CONNECTICUT 06105

AREA OFFICES
Boston, Massachusetts
Hartford, Connecticut
Manchester, New Hampshire

REGION I
REGIONAL OFFICE
BOSTON, MASSACHUSETTS

May 13, 1975

IN REPLY REFER TO:

Mr. Arthur Green, Director
Connecticut Commission On Human Rights And Opportunities
90 Washington Street
Hartford, Connecticut 06115

Dear Mr. Green:

The Equal Opportunity Section of the U.S. Department of Housing and Urban Development, Hartford Area Office would like to commend you and your staff on the excellent work done in reviewing Community Development Block Grant Applications (C.D.B.G.) which are being reviewed by the Hartford Area Office. The sending of copies of your A-95 reviews on all cities and towns applying for grants to Equal Opportunity in advance has been most helpful to us in our review of C.D.B.G. Applications.

We realize that reviewing the applications added a greater workload to your staff which also handles discrimination complaints in housing, education, and employment. The quality of the reviews showed that much time and effort was spent in making your assessments.

Such cooperation has been most beneficial. We have always enjoyed the cooperation of your office on other aspects of HUD Programs and are looking forward to this continued relationship in the future.

Sincerely,

Frank H. Burtin

Frank H. Buntin, Director
Equal Opportunity

CC: Governor Ella Grasso
Mr. Tom Jenkins, Acting Assistant Secretary, HUD E.O. Washington
Ms. Mary Pinkard, Acting Deputy, HUD Office of Policy Development
Mr. James Rice, Commissioner, Department of Community Affairs
Mr. Joseph Vera, HUD, ARA for E.O. Boston Regional Office

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CITY OF HARTFORD, ET AL.,

Plaintiffs-Appellees,

vs.

The TOWNS OF GLASTONBURY, WEST HARTFORD and EAST HARTFORD,

Defendants-Appellants,

and

CARLA A. HILLS, ET AL.,

Defendants.

State of New York,
County of New York,
City of New York—ss.:

IRVING LIGHTMAN being duly sworn, deposes and says that he is over the age of 18 years. That on the 17th day of June, 1976, he served one copies of the Joint Appendix on See attached list

the attorneys for the see attached list by depositing the same, properly enclosed in a securely sealed post-paid wrapper, in a Branch Post Office regularly maintained by the Government of the United States at 90 Church Street, Borough of Manhattan, City of New York, directed to said attorneys at No. See attached list ( ) N. Y., that being the address designated by them for that purpose upon the preceding papers in this action.

Irving Lightman

Sworn to before me this
17th day of June, 1976.

Courtney J. Brown

COURTNEY J. BROWN
Notary Public, State of New York
No. 31-5472920
Qualified in New York County
Commission Expires March 30, 1978

Due and timely service of ONE copies
of the within APPENDIX is hereby
admitted this 17TH day of JUNE 1976.

Patricia Cooper FOR RICHARD A. BELLMAN
OF COUNSEL TO Attorneys for PLAINTIFFS-APPELLEES